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# INDEX-DIGEST

OF THE

Cases Reported in Volumes 1 to 23

INCLUSIVE

## American and English Railroad Cases

New Series

AND INDEX TO THE NOTES THERETO

WITH

TABLE OF CASES REPORTED

---

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Taylor *v.* Bay City St. Railroad Co. (Mich.), vol. 1, p. 165.

Agreement of street railway company, in consideration of consent of an abutting owner, that it would not thereafter lay a second track.

Doane *v.* Chicago City Ry. Co. (Ill.), vol. 6, p. 792.

A street railway company could not urge as a defense to an action to compel operation of its line that it occupies such street merely as the abutters' licensee, where it had been in undisturbed possession for over five years.

State ex rel. Grinsfelder *v.* Spokane St. Ry. Co. (Wash.), vol. 11, p. 62.

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Varwig *v.* Cleveland, C., C. & St. L. R. Co. (Ohio), vol. 4, p. 265.

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State (Roebeling, Prosecutrix) *v.* Trenton Passenger Railway Co., Consolidated (N. J.), vol. 4, p. 392.

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- Lake Roland Elevated R. Co. *v.* Webster (Md.), vol. 1, p. 360.
- White *v.* Manhattan Railway Co. (N. Y.), vol. 1, p. 351.
- Erection of poles in streets.
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- Snyder *v.* Ft. Madison St. Ry. Co. (Iowa), vol. 11, p. 53.
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- Reid *v.* Norfolk St. City R. Co. (Va.), vol. 6, p. 792.
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**ACCIDENTS ON TRACK.***See Children.**Licensees.**Master and Servant.**Street Railways.**Trespassers.*

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Walton *v.* Chattanooga Rapid-Transit Co. (Tenn.), vol. 19, p. 436.

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Effect of failing to avoid injury.

Schneider *v.* Market St. Ry. Co. (Cal.), vol. 23, p. 692.

Fact that person, accustomed to pass through defendant's yard, and who was familiar with its switches, etc., caught his foot in an unblocked frog on dark night, was held not to warrant the holding as a matter of law that he was negligent.

Lee *v.* International, etc., R. Co. (Tex.), vol. 5, p. 376.

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train is contributory negligence as a matter of law.

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 Texas & P. Ry. Co. v. Staggs (Tex.), vol. 8, p. 197.

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 Chattanooga, R. & S. Ry. Co. v. Downs (C. C. A.), vol. 21, p. 493.

Pedestrian failing to look for trains in his rear.  
 Southern Ry. Co. v. Barfield (Ga.), vol. 19, p. 702.

Persons walking on a railroad track in a street, saw an engine approaching and stepped off that track upon another, not stopping in the space intervening between the two tracks. It was held he was guilty of contributory negligence if he would have been safe in the intervening space.  
 McIlhancy v. Southern R. Co. (N. Car.), vol. 6, p. 693.

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*Whitesides v. Southern Ry. Co.* (N. Car.), vol. 21, p. 537.

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Trudell *v.* Grand Trunk Ry. Co. (Mich.), vol. 20, p. 316.

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Action ex delicto will not lie for breach of executory contract to furnish free transportation voluntarily made.

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No joinder of causes warranting that plaintiff be required to elect, in action for killing horses on track.

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*Malott v. Shimer* (Ind.), vol. 15, p. 774.

Parties as affected by change of venue of action to forfeit railroad franchises.

*Eel River R. Co. v. State ex rel. Kistler, Pros. Atty.* (Ind.), vol. 17, p. 595.

Parties necessary in condemnation proceedings.

*Illinois Cent. R. Co. v. Town of Normal* (Ill.), vol. 13, p. 367.

Recovery in action for personal injury will not be defeated by reason that another action for same injury has been instituted without plaintiff's authority.

*Wolf v. Great Northern Ry. Co.* (Minn.), vol. 12, p. 619.

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*Herndon v. Southern R. Co.* (C. C. A.), vol. 8, p. 765.

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*Chicago, R. I. & P. Ry. Co. v. Young* (Neb.), vol. 14, p. 343.

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Shipper whose stock has escaped from cattle pen and been killed on track may bring one action for negligence of carrier in furnishing defective pens and for negligence in killing stock.

Missouri, K. & T. Ry. Co. *v.* Byrne (C. C. A.), vol. 18, p. 573.

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**"ANTI SCALPERS ACT."***See Constitutional Law.***APPEAL.***See Corporations.**Damages.**Federal Jurisdiction.*

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An appeal was taken from a final order, made by a court which had appointed receivers for an insolvent railway company in a foreclosure suit directing the receivers to give priority over the mortgages to judgments obtained against the company on liabilities incurred before that commencement of the foreclosure suit: *held*, that the railway company was a necessary party to such appeal.

Farmers' Loan & Trust Co. v. Longworth (C. C. A.), vol. 9, p. 201.

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**BRIDGES.**

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 Myers *v.* Chicago, St. P., M. & O. Ry. Co. (C. C. A.), vol. 14, p. 749.
- Negligence in maintaining low topped bridge.  
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- Obstruction of navigable stream.  
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- Right of street railway to build overheard bridge over right of way of a railroad company.  
 Northern Cent. R. Co. *v.* Harrisburg & M. Electric R. Co. (Pa. St.), vol. 6, p. 151.
- Servant having notice assumes risk of low bridge.  
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Whether railroad liable for personal injuries caused by collapse depended on weight of vehicle, construction of New York Laws 1890, ch. 568, sec. 154.

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Omaha Street Ry. Co. v. Martin (Neb.), vol. 4, p. 1.

Action for injury to live stock shipped by connecting carriers.

Milam v. Southern Ry. Co. (S. Car.), vol. 18, p. 253.

Burden is on plaintiff, in action for injuries alleged to have been caused by fellow servant, to show that he was free from fault, and when this is done,

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burden is on defendant to show that his servants were not at fault.

Florida Cent. & P. R. Co. v. Mooney (Fla.), vol. 12, p. 721.

Burden is on plaintiff, in action for personal injuries to show extent of injuries and damages sustained thereby.

Texas & P. Ry. Co. v. Barrett (U. S.), vol. 11, p. 867.

Burden of proof as to compliance with statute creating absolute liability for failure to observe statutory precautions to prevent accidents on railroads.

Walton v. Chattanooga Rapid-Transit Co. (Tenn.), vol. 19, p. 436.

Burden of proof as to knowledge of defect, in action for death of employee.

Judd v. Chesapeake & O. Ry. Co. (Ky.), vol. 11, p. 517.

Burden of proof as to negligence of railroad where responsibility for origin of fire has been fixed upon it.

Patteson v. Chesapeake & O. R. Co. (Va.), vol. 6, p. 389.

Burden of proof where passenger is injured.

Chicago City Ry. Co. v. Rood (Ill.), vol. 7, p. 784.

Burden of proving conscious suffering in action for death by wrongful act.

Sweetland v. Chicago & G. T. R. Co. (Mich.), vol. 11, p. 613.

Burden of proving nonassumption of risk from unblocked guard-rail.

Burnham v. Concord & M. R. R. (N. H.), vol. 16, p. 320.

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Absence of contributory negligence in action for death by wrongful act.

Heckle *v.* Southern Pac. Co. (Cal.), vol. 15, p. 584.

Burden of proving due care by deceased where employee is killed on track.

Dyer *v.* Fitchburg R. Co. (Mass.), vol. 11, p. 473.

Tumalty *v.* New York, N. H. & H. R. Co. (Mass.), vol. 11, p. 468.

Burden of proving failure of injured person to exercise care at crossing is on company.

Steele *v.* Northern Pac. Ry. Co. (Wash.), vol. 15, p. 129.

Where it is admitted that plaintiff's decedent knew that an appliance was defective, burden is on plaintiff to show that his decedent was justified in running risk of injury therefrom.

Ford *v.* Chicago, R. I. & P. Ry. Co. (Iowa), vol. 11, p. 489.

Crossings, due care by deceased at crossing.

Crawford *v.* Chicago G. W. Ry. Co. (Iowa), vol. 16, p. 628.

Crossings, to show that driver exercised reasonable care.

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Instructions as to burden of proving exercise of due care by person injured while on track.

Chicago, B. & Q. R. Co. *v.* Murowaki (Ill.), vol. 15, p. 697.

It was error to instruct upon

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which party burden of proof rested.

Macon *v.* Paducah St. Ry. Co. (Ky.), vol. 22, p. 614.

Necessity of change of route.

Village of Wayzata *v.* Great Northern Ry. Co. (Minn.), vol. 7, p. 360.

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Negligence and contributory negligence.

Cox *v.* Norfolk & C. R. Co. (N. Car.), vol. 12, p. 390.

Plaintiff in action to recover for personal injuries alleged to have been caused by defective engine must show that it was unsuitable for use and that such defects caused the accident.

Texas & P. Ry. Co. *v.* Barrett (U. S.), vol. 11, p. 867.

Statutory rule as to presumption of negligence does not apply in action against receiver.

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Verdict not directed for party on whom is burden of proof.

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Indictment for burglary.

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**CARE.**

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**CAR COUPLERS.**

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**CAR INSPECTORS.**

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**CAR RENTALS.**

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**CARRIERS.**

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**CARRIERS OF FREIGHT.**

*See Carriers of Goods.*  
*Carriers of Live Stock.*  
*Circus.*  
*Common Carriers.*  
*Competition.*  
*Connecting Carriers.*  
*Damages.*  
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**Actions.**

Action for breach of contract of shipment and action ex contractu.

*Southern Ry. Co. v. Rosenberg* (Ala.), vol. 22, p. 418.

Action for breach of contract to furnish cars.

*Gulf, Colorado, etc., R. Co. v. Hodge* (Tex.), vol. 2, p. 574.

Action for damage to goods shipped from outside of state to point not on defendant's road.

*Kerr v. Georgia R. Co.* (Ga.), vol. 14, p. 837.

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*Waters v. Mobile, etc., R. Co.* (Miss.), vol. 6, p. 772.

Whether tender of payment of freight must be shown.

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**CARRIERS OF GOODS—Continued.****Agency.**

Agency of officers to consignee after delivery extends only to goods rightfully shipped.

*Bowers v. J. B. Worth Co.* (N. Car.), vol. 22, p. 658.

Authority of local agents.

*Coates v. Chicago, M. & St. P. R. Co.* (S. Dak.), vol. 3, p. 426.

Authority of local agents to make contract for transportation beyond carrier's line.

*Sutton v. Chicago & N. W. Ry. Co.* (S. Dak.), vol. 20, p. 726.

Authority of station agent to bind company by contract to furnish cars.

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Carrier estopped to plead that contract for shipment of freight was ultra vires in an action to recover for its failure to carry out such contract.  
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- as condition precedent to delivery.
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- Whether freight should have been paid before, action for failure to deliver will lie.
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- Common carrier's liability.
- Cooper *v.* Raleigh & G. R. Co. (Ga.), vol. 18, p. 412.
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- Savannah, F. & W. Ry. Co. *v.* Commercial Guano Co. (Ga.), vol. 12, p. 848.
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- Contract for carriage of goods must have mutuality.
- Missouri, K. & T. Ry. Co. *v.* Bagley (Kan.), vol. 13, p. 259.
- Contract for exclusive use of track by shipper void as against public policy.
- Louisville, etc., R. Co. *v.* Pittsburg, etc., Coal Co. (Ky.), vol. 23, p. 332.
- Contract not to carry, to prevent competition, not allowable.
- Cumberland Tel. & Tel. Co. *v.* Morgan's L. & T. R. Co. (La.), vol. 13, p. 71.
- Contract of carrier to furnish cars not unilateral where it imposes on the other party the obligation to load, inspect, and ship.
- Baxley *v.* Tallassee & M. R. Co. (Ala.), vol. 21, p. 170.
- Shipper presumed to know contents of contract of shipment.
- Kellerman *v.* Kansas City, St. J. & C. B. Railroad Co. (Mo.), vol. 3, p. 290.
- Verbal agreement for carriage of freight cannot be modified by subsequent written

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- agreement after car was loaded, where shippers' attention was not called to modification.
- Stoner *v.* Chicago G. W. Ry. Co. (Iowa), vol. 18, p. 221.
- What constitutes contract to carry.
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- Where the evidence as to whether or not a contract of shipment was entered into was conflicting the question was properly submitted to the jury.
- Meloche *v.* Chicago, M. & St. P. Ry. Co. (Mich.), vol. 10, p. 82.
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## **Measure of Damages.**

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Consignor as plaintiff in action for delay in delivery of freight.

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Wrongful delivery by connecting carrier.

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**Delivery to Carrier.**

Cattle placed in railroad stock pens not delivered until received by carrier.

Kansas City P. & G. R. Co. *v.* Barnett (Ark.), vol. 22, p. 81.

Cotton on carrier's wharf awaiting transportation by steam boat company is in carrier's "actual custody." Texas & P. Ry. Co. *v.* Clayton (U. S.), vol. 13, p. 236.

Effect of delay in delivery to carrier partially caused by its fault in making overcharges.

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Freight on platform presumed to be in carrier's custody.

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Where goods properly marked are placed inside of defendant's freight depot for immediate shipment, and defendant's agents agree to ship them on the following morning, defendant is liable as a common carrier.

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*Kentucky Const.*, sec. 218, prohibiting the charging of more for short than long haul, not applicable where short haul originates on branch line and long haul is altogether on main line.

*Louisville & N. R. Co. v. Walker (Ky.)*, vol. 21, p. 473.

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*Louisville & N. R. Co. v. Walker (Ky.)*, vol. 21, p. 473.

Liability to indictment for charging more for short than long haul.

*Illinois Cent. R. Co. v. Commonwealth (Ky.)*, vol. 22, p. 356.

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*State v. Texas & P. Ry. Co. (La.)*, vol. 18, p. 399.

Presumption that shipper is damaged by a higher charge for a short than a long haul.

*Louisville & N. R. Co. v. Walker (Ky.)*, vol. 21, p. 473.

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*Louisville & N. R. Co. v. Commonwealth (Ky.)*, vol. 18, p. 297.

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*Church v. Minneapolis & St. L. Ry. Co. (S. Dak.)*, vol. 21, p. 382.

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*Murray v. Chicago & N. W. Ry. Co. (C. C. A.)*, vol. 13, p. 278.

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Under Ky. St. sec. 820, recommendation of railroad commission necessary to indictment of carrier for charging more for short than long haul.

*Illinois Cent. R. Co. v. Commonwealth (Ky.)*, vol. 23, p. 326.

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*Johnson v. Southern Ry. Co. (S. Car.), vol. 12, p. 272.*

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*Norfolk & W. R. Co. v. Marshall (Va.), vol. 2, pp. 220, 221.*

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*Dixon v. New England R. (Mass.), vol. 22, p. 10.*

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*Dixon v. New England R. (Mass.), vol. 22, p. 10.*

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*Cone v. Central R. Co. (N. J.), vol. 12, p. 278.*

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St. Louis S. W. Ry. Co. *v.* Berger (Ark.), vol. 10, p. 235.

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- Passenger carelessly stepping down from car not having sufficient steps is guilty of.  
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- Passenger compelled to sleep on top of stock car attempting to walk from one car to another.  
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- The negligent and terrifying acts and exclamations of brakeman in a caboose of a mixed freight and passenger train were such as to reasonably cause a passenger in caboose to believe that a wreck was imminent, and he jumped from the train and was injured. It appeared that brakeman had no express duty to perform in or about the caboose, nor in the direction of the passengers, and that there was no reason for his alarm: *held*, that the railway company was liable for the injuries.  
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Louisville & N. R. Co. *v.* Keller (Ky.), vol. 12, p. 89.

Question for jury, under pleading and proof, whether plaintiff was injured by reason of failure to stop train at station.

Cooper *v.* Georgia, etc., Ry. Co. (S. Car.), vol. 22, p. 677.

Question of fact whether passenger had time to alight.

Killian *v.* Georgia R., etc., Co. (Ga.), vol. 5, p. 694.

Right to pass station without stopping.

Noble *v.* Atchison, T. & S. F. R. Co. (Okla.), vol. 5, p. 309.

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Running freight train past station at a high rate of speed while passengers are alighting from another train is negligence.

Chicago & A. R. Co. *v.* Kelly (Ill.), vol. 17, p. 52.

Special agreement that train should stop at station.

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Stoppage of train an invitation to alight.

Raub *v.* Los Angeles (Cal.), vol. 2, p. 281.

Sufficiency of evidence of notice to conductor of intention to leave train on part of person assisting passenger.

Berry *v.* Louisville & N. R. Co. (Ky.), vol. 20, p. 401.

Time allowed passengers to leave train, jumping after train starts.

Louisville & N. R. Co. *v.* Ricketts (Ky.), vol. 6, p. 186.

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Louisville, etc., R. Co. *v.* Ellis (Ky.), vol. 2, p. 132.

Death of intoxicated passenger carried beyond station and expelled from depot.

Haug *v.* Great Northern Ry. Co. (N. Dak.), vol. 12, p. 25.

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Hamilton *v.* Pittsburgh, etc., R. Co. (Pa.), vol. 10, p. 70.

Liability for injury to intoxicated passenger falling from train, sufficiency of evidence.

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Liability of company for death of intoxicated passenger after expulsion from train.

Louisville & Nashville R. Co. *v.* Ellis (Ky.), vol. 2, p. 132.

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Duties of carriers of passengers, general rules.

Baltimore & Potomac R. Co. *v.* Swann (Md.), vol. 2, p. 187.

Chicago & Alton R. Co. *v.* Byrum (Ill.), vol. 2, p. 211.

Chicago, Kansas & Western R. Co. *v.* Frazer (Kan.), vol. 2, p. 206.

Daniels *v.* Western & A. R. Co. (Ga.), vol. 2, p. 211.

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Kinney *v.* Louisville & N. R. Co. (Ky.), vol. 3, p. 652.

Louisville R. Co. *v.* Park (Ky.), vol. 2, p. 211.

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Duty of carriers of passengers as a question for jury.

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Duty of carrier to give notice of the danger of approaching burning oil tank.

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Duty of company to passenger sleeping near track.

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Duty to Heat Cars and Depots.

Duty of railroad company to heat its cars, action for death of child from exposure to cold.

Ft. Worth & D. C. Railway Co. *v.* Hyatt (Tex. Civ. App.), vol. 3, p. 397.

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Duty to keep platform lighted after arrival of train.

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Failure to light platform must be proximate cause of passenger's injury.

Berry *v.* Louisville & N. R. Co. (Ky.), vol. 20, p. 401.

Liability for failure to light station as affected by intention to remain unreasonable time.

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Admissibility of evidence as to reasons for taking car in question.

Atlanta Consol. St. R. Co. *v.* Hardage (Ga.), vol. 2, p. 158.

Admissibility of evidence of plaintiff's drunkenness at time of ejection.

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Arkansas statute prohibiting ejection of passenger for refusing to pay fare at places other than stations is not applicable where ejection was for other cause.

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- Blind person.  
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- Carrier liable where servant uses unnecessary force.  
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- Conductor has a right to eject a person from his car whose sole claim to be considered a passenger is by virtue of a ticket void on its face.  
McGhee v. Reynolds (Ala.), vol. 10, p. 49.
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- Ejection of passenger for having unstamped ticket who enters on conductor's invitation.  
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- Employee's authority need not be proven in action for malicious ejection.  
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*Illinois Cent. R. Co. v. Kuhn (Tenn.)*, vol. 22, p. 324.
- Failure to warn passengers of danger created by washing away of embankments which caused overturning of cars.  
*Southern Pac. Co. v. Tarin (C. C. A.)*, vol. 21, p. 928.
- Liability for failure to provide culvert able to withstand extraordinary flood, where a passenger was injured.  
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- Plaintiff was delayed upon defendant's railroad by a

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- flood and highwater, upon advice of defendant's agent he sought transportation over a second road, where he was again delayed. It was held that defendant was liable for the expense incurred by plaintiff, including that incident to the unavoidable delay on the line of the second carrier.  
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- Foot-stools.  
*Madden v. Port Royal & W. C. R. Co. (S. Car.)*, vol. 2, p. 280.
- Free Passes.  
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*Curry v. Kansas, etc., Ry. Co. (Kan.)*, vol. 8, p. 755.
- Discrimination.  
*State v. Southern Ry. Co. (N. Car.)*, vol. 11, p. 228.
- Interstate commerce.  
*Curry v. Kansas, etc., Ry. Co. (Kan.)*, vol. 8, p. 755.
- Liability for injury to person riding gratuitously.  
*Russell v. Pittsburgh, etc., Ry. Co. (Ind.)*, vol. 23, p. 601.
- Validity of printed conditions in passes issued to employees.  
*Whitney v. New York, etc., R. Co. (C. C. A.)*, vol. 19, p. 184.
- Freight Trains.  
Care due passenger.  
*Delaware, L. & W. R. Co. v. Ashley (C. C. A.)*, vol. 2, p. 212.  
*Steele v. Southern Ry. Co. (S. Car.)*, vol. 14, p. 350.
- Care due to shipper riding in stock car on shipper's pass.  
*Chicago, R. I. & P. Ry. Co. v. Lee (C. C. A.)*, vol. 14, p. 264.
- Duty to person riding on freight train by sufferance of trainmen.  
*Dalton v. Louisville & N. R. Co. (Ky.)*, vol. 17, p. 768.
- Failure to have conductor on, is negligence as a matter of law.  
*Means v. Carolina Cent. R. Co. (N. Car.)*, vol. 14, p. 363.

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Highest degree of care due passenger on.

Sprague *v.* Southern Ry. Co. (C. C. A.), vol. 14, p. 356.

Injury to passenger on freight car.

Beyer *v.* Louisville & N. R. Co. (Ala.), vol. 9, p. 819.

Liability of railroad company for injury to licensee on freight train.

Cleveland, C., C. & St. L. Ry. Co. *v.* Best (Ill.), vol. 9, p. 660.

Liability of railroad company for injury to passenger on freight train.

Heyward *v.* Boston & A. R. Co. (Mass.), vol. 10, p. 260.

Passengers.

Arkansas Midland R. Co. *v.* Griffith (Ark.), vol. 9, p. 846.

Passenger on freight train cannot demand to be carried to other than regular stopping place of such train.

Southern Ry. Co. *v.* Howard (Ga.), vol. 18, p. 758.

Passenger riding in freight car.

Schilling *v.* Winona, etc., R. Co. (Minn.), vol. 5, p. 694.

Right of action of passenger on freight train injured through negligence in stopping train.

Garland *v.* Southern Ry. Co. (Ga.), vol. 18, p. 759.

Right of person to board freight train, without permit, relying on ticket agent's representations.

Louisville & N. R. Co. *v.* Hine (Ala.), vol. 14, p. 382.

Right of sheriff to ride on freight train.

Allen *v.* Lake Shore & M. S. Ry. Co. (Ohio), vol. 9, p. 25.

Shipper riding unnecessarily in freight car with permission of trainmen, is guilty of contributory negligence.

Walker *v.* Green (Kan.), vol. 14, p. 366.

The negligent and terrifying acts and exclamations of a brakeman in the caboose of a mixed freight and passen-

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ger train were such as to reasonably cause a passenger in the caboose to believe that a wreck was eminent, and he jumped from the train and was injured. It appeared that the brakeman had no express duty to perform in or about the caboose, nor in the direction of the passenger, and that there was no reason for his alarm: *held*, that the railway company was liable for the injuries.

Ephland *v.* Missouri Pac. Ry. Co. (Mo.), vol. 7, p. 579.

Gross negligence in constructing platform so as to cause obstruction to train when cotton is piled upon it.

Kird *v.* New Orleans, etc., R. Co. (La.), vol. 20, p. 930.

Ice on car step.

Gilman *v.* Boston & M. R. R. (Mass.), vol. 8, p. 478.

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Gray *v.* Boston & M. R. R. (Mass.), vol. 8, p. 481.

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Jones *v.* New York Cent. & H. R. Co. (N. Y.), vol. 11, p. 185.

Injuries to express companies.

Voight *v.* Baltimore & O. S. W. Ry. Co. (Ohio), vol. 9, p. 835.

Injury to passenger by starting car.

Conway *v.* New Orleans & C. R. Co. (La. Ann.), vol. 2, p. 222.

Louisville, etc., R. Co. *v.* Hale (Ky.), vol. 10, p. 73.

Merritt *v.* New York, N. H. & H. R. Co. (Mass.), vol. 2, p. 223.

Raub *v.* Los Angeles T. R. Co. (Cal.), vol. 2, p. 223.

Injury to passenger by throwing mail sack from train.

Hughes *v.* Chicago & Alton R. Co. (Mo.), vol. 2, p. 284.

Injury to passenger during receivership.

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Fremont, etc., Ry. Co. *v.* Root (Neb.), vol. 8, p. 754.

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- Injury to passenger on street car, presumption of negligence.  
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*Louisville & N. R. Co. v. Bell* (Ky.), vol. 8, p. 413.
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*Gray v. Boston & M. R. R.* (Mass.), vol. 8, p. 481.
- Inspection of cars.  
*Keating v. Detroit, B. C. & A. R. Co.* (Mich.), vol. 2, p. 222.
- Inspection of trains.  
*Proud v. Philadelphia & R. R. Co.* (N. J.), vol. 18, p. 633.
- Instruction as to negligence in starting train.  
*Johnson v. Southern Ry. Co.* (S. Car.), vol. 12, p. 273.
- Insults, passenger's right of action.  
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*Atlantic & P. Ry. Co. v. Laird* (U. S.), vol. 8, p. 365.
- Joint negligence of two carriers causing injury to passenger.  
*Atlantic & P. Ry. Co. v. Laird* (U. S.), vol. 8, p. 365.
- West Chicago St. R. Co. v. Piper* (Ill.), vol. 9, p. 147.
- Jolts and Jars.  
 Jerking of train not negligence with respect to passenger standing on car platform after announcement of station.  
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- Morris* (Ky.), vol. 21, p. 380.
- Leaving car door open and causing sudden jerk of train, injuring passenger closing door, is actionable negligence.  
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- Negligence in allowing passenger to go on car platform.  
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- Negligence in starting train question for jury.  
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- Negligence of company question for jury, where passenger riding on platform of street car is injured by sudden jerk.  
*Bradley v. Second Ave. R. Co.* (N. Y.), vol. 12, p. 184.
- Negligence of company, where passenger on platform of car at station is injured by jerking of train swinging door to, is for jury.  
*McCurrie v. Southern Pac. Co.* (Cal.), vol. 12, p. 170.
- One assisting passenger to board train was compelled by sudden jerk of car to jump, and was injured: *held*, negligence of carrier was question for jury.  
*Whitley v. Southern Ry. Co.* (N. Car.), vol. 12, p. 210.
- Passenger closing car door injured by sudden jerk.  
*Denver & R. G. R. Co. v. Bedell* (Colo.), vol. 12, p. 141.
- Passenger in baggage car.  
*Gardner v. Waycross, etc., R. Co.* (Ga.), vol. 5, p. 694.
- Passengers injured by sudden jerk of train not required to show which employee caused it.  
*Pomeroy v. Boston & M. R. R.* (Mass.), vol. 12, p. 119.
- Passenger injured by train suddenly starting after it has stopped at station while she is on the platform.  
*Carroll v. Burleigh* (Wash.), vol. 5, p. 628.



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- Passenger on platform of car at station injured by jerking of train swinging door to, company's negligence was for jury.  
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- Starting train before passenger is seated.  
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- Sufficiency of evidence to sustain verdict for plaintiff in action for injury to passenger from sudden starting of car.  
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- Leases and Running Powers.**
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*Chicago, R. I. & P. Ry. Co. v. Posten (Kan.)*, vol. 11, p. 138.
- Liability for expulsion of passenger by lessee of train.  
*Chesapeake & O. R. Co. v. Osborne (Ky.)*, vol. 2, p. 157.
- Responsibility for acts of lessee.  
*White v. Norfolk & S. R. Co. (N. Car.)*, vol. 2, p. 222.
- Liability for death of passenger alighting from moving train by invitation of conductor.  
*Lewis v. President, etc., Canal Co. (N. Y.)*, vol. 2, p. 192.
- Liability for death of person at station to meet passenger.  
*Denver & R. G. R. Co. v. Spencer (Colo.)*, vol. 18, p. 236.
- Liability for injuries received by passenger while boarding train not at platform.  
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- Liability for injuries to passengers seeking to purchase tickets, effect of slight errors in instructions.  
*Yazoo & M. V. R. Co. v. Martin (Miss.)*, vol. 21, p. 301.
- Liability of carrier for death of passenger whose head was protruding from window.  
*Shelton v. Louisville & N. R. Co. (Ky.)*, vol. 8, p. 678.
- Liability of carriers for injury to express messengers.  
*Voight v. Baltimore & O. S. W. Ry. Co. (Ohio)*, vol. 9, p. 835.
- Liability of company for injuries to person on train, at instance of unauthorized employee.  
*Chicago, St. Paul, etc., R. Co. v. Bryant (C. C. A.)*, vol. 2, p. 319.
- Liability of company for injury to third person where the act is within the scope of the servant's employment, though the particular act was not authorized.  
*Gray v. Boston & M. R. R. (Mass.)*, vol. 8, p. 481.
- Liability of company for tortious acts of employees.  
*Krantz v. Rio Grande Western R. Co. (Utah)*, vol. 2, p. 432.
- Sharer v. Paxson (Pa.)*, vol. 2, p. 429.
- Malice implied where carrier carelessly repudiated valid ticket.  
*Winters v. Cowen (C. C. Ohio)*, vol. 12, p. 40.
- Mandamus to compel operation of passenger trains.  
*People, Cantrell v. St. Louis, A. & T. H. R. Co. (Ill.)*, vol. 12, p. 227.
- Massachusetts statute authorizing actions for death of passenger not applicable to railroads.  
*Boston & M. R. R. v. Hurd (C. C. A.)*, vol. 21, p. 674.
- Massachusetts statute authorizing recovery in actions for death of passenger, to punish railroad, is remedial in an international sense, and recovery thereunder may be

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had in federal court of sister state.

*Boston & M. R. R. v. Hurd* (C. C. A.), vol. 21, p. 674.

Medical attention, failure to aver due diligence in providing for injured passenger.

*Indianapolis St. Ry. Co. v. Robinson* (Ind.), vol. 23, p. 628.

**Mistake.**

Duty of company to person on train by mistake.

*Lewis v. President, etc., Canal Co.* (N. Y.), vol. 2, p. 192.

Mistake of ticket agent.

*Courts v. Louisville & N. R. Co.* (Ky.), vol. 5, p. 223.

*Louisville & N. R. Co. v. Gaines* (Ky.), vol. 5, p. 226.

**Mixed Trains.**

Mixed trains are not sufficient compliance with duty to provide for carriage of passengers.

*People, Cantrell v. St. Louis, A. & T. H. R. Co.* (Ill.), vol. 12, p. 227.

Mixed trains made up in part of a passenger equipment and in part of freight cars, used for the transportation of passengers are "passenger trains" within the meaning of defendant's articles of association and of its "lease contract" with the plaintiff; and the defendant is required to furnish such trains, reasonable passenger depot facilities and service.

*Chicago G. W. Ry. Co. v. St. Paul Union Depot Co.* (Minn.), vol. 7, p. 679.

Validity of by-laws excluding mixed train from union depot.

*Chicago G. W. Ry. Co. v. St. Paul Union Depot Co.* (Minn.), vol. 7, p. 679.

Whether railroad company may be forced to operate passenger instead of a mixed train by mandamus.

*People v. St. Louis, etc., R. Co.* (Ill.), vol. 6, p. 241.

**Nature of action.**

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Nebraska statute giving right

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of action for injury to passenger construed.

*Chicago, R. I. & P. Ry. Co. v. Zerneck* (Neb.), vol. 17, p. 76.

Negligence and contributory negligence were questions for jury, where passenger was injured by reason of unfastened door.

*Bronson v. Oakes* (C. C. A.), vol. 9, p. 166.

Negligence a question for jury.

*Lane v. Spokane Falls & N. Ry. Co.* (Wash.), vol. 14, p. 436.

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*New York, C. & St. Louis R. Co. v. Blumenthal* (Ill.), vol. 4, p. 174.

*Sprague v. Southern Ry. Co.* (C. C. A.), vol. 14, p. 356.

Negligence in backing train at depot.

*St. Louis, etc., Ry. Co. v. Tomlinson* (Ark.), vol. 22, p. 682.

Negligence in leaving switch open.

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*Illinois Cent. R. Co. v. Beebe* (Ill.), vol. 11, p. 163.

Negligence in storing goods on platform so as to obstruct passenger train.

*Kird v. New Orleans, etc., R. Co.* (La.), vol. 20, p. 930.

Negligence of employees, though performing ultra vires agreement of carrier, renders carrier liable.

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*Central of Ga. Ry. Co. v. Johnston* (Ga.), vol. 12, p. 286.

Notice to company of danger to passenger at station from third parties, question for jury.

*Exton v. Central R. Co. of New Jersey* (N. J.), vol. 14, p. 240.

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## **Parcels.**

A person entitled by the terms of his ticket to "personal passage" on a railroad car has not the right to carry with him packages of groceries for the use of his family.

Delaware, L. & W. R. Co. v. Bullock (N. J.), vol. 7, p. 370.

Right to carry parcels, sufficiency of evidence of usage to show adoption of rule by carrier.

Runyan v. Central R. Co. of New Jersey (N. J.), vol. 19, p. 290.

Passenger injured by trunk falling on him while he was passing to the eating house from a train.

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Pleading in the alternative, in action for injury to passenger in a collision.

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Pleading, there can be no recovery for failure to observe common-law duty of ordinary care towards person on street crossing where only cause of action alleged his defendant's breach of duty as carrier of passengers.

Chicago & E. I. R. Co. v. Jennings (Ill.), vol. 22, p. 127.

Presumption of Negligence from Accident.

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Presumption of negligence from derailment of train.

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Presumption of negligence where injury is caused by collision between trains.

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Presumption of negligence where passenger was injured in collision between street car and wagon.

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Proximate cause of injury to passenger sustained in alighting at point where train had stopped because of a collision.

Vandercook *v.* Detroit, G. R. & W. R. Co. (Mich.), vol. 20, p. 353.

Proximate cause of injury to passenger who stepped back, from position of safety, between cars of divided train.

Butts *v.* Cleveland, etc., R. Co. (C. C. A.), vol. 23, p. 100.

Proximate cause of injury to passenger alighting from moving train.

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Kates *v.* Atlanta, B. & C. Co. (Ga.), vol. 16, p. 140.

Stockman, carrier negligent in maintaining snowshed of insufficient height and in not giving warning of its height.

Nelson *v.* Southern Pac. Co. (Utah), vol. 14, p. 374.

Substitution of baggage car for passenger coach.

Baltimore & Potomac R. Co. *v.* Swann (Md.), vol. 2, p. 187.

Sufficiency of evidence of negligence where car door shut upon passenger's hand.

Skinner *v.* Wilmington & W. R. Co. (N. Car.), vol. 22, p. 32.

The negligent and terrifying acts and exclamations of a brakeman in the caboose of a mixed freight and passenger train were such as to reasonably cause a passenger in the caboose to believe that a wreck was imminent and he jumped from the train and was injured. It appeared that the brakeman had no express duty to perform in or about the caboose nor in the direc-

tion of the passengers and that there was no reason for his alarm: *held*, that the railway company was liable for the injuries.

Ephland *v.* Missouri Pac. Ry. Co. (Mo.), vol. 7, p. 579.

Where train broke apart negligence was a question for jury.

Delaware, L. & W. R. Co. *v.* Ashley (U. S.), vol. 2, p. 386.

Whether carrier is liable for injury caused to passenger by a brakeman, while off duty, going to summon conductor to collect tickets, where brakeman afterwards collected the tickets himself.

Schimpf *v.* Harris (Pa.), vol. 11, p. 470.

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Alighting at intermediate station.

Lemery *v.* Great Northern Ry. Co. (Minn.), vol. 21, p. 257.

Alighting at intermediate station does not terminate relation of carrier and passenger.

Missouri, K. & T. Ry. Co. *v.* Overfield (Tex. Civ. App.), vol. 12, p. 207.

A person with ticket carelessly entering train and chargeable with knowledge that it will not stop at his destination is, within meaning of Arkansas statute providing for recovery of damages for ejection of passenger at place other than usual stopping place.

St. Louis S. W. Ry. Co. *v.* Harper (Ark.), vol. 21, p. 77.

Carrier not liable for injury to one who while riding in baggage car, colluding with baggage-master, was compelled by the latter to jump from moving train.

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Duty of company, when duty ends.

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- Employee riding from work as passenger.  
*Ionnone v. New York, N. H. & H. R. Co. (R. I.)*, vol. 16, p. 359.
- Employee riding to work as passenger.  
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*McNulty v. Pennsylvania R. Co. (Pa.)*, vol. 8, p. 685.
- Wright v. Northampton & H. R. Co. (N. Car.)*, vol. 10, p. 151.
- Employees riding on passes as passengers.  
*Whitney v. New York, etc., R. Co. (C. C. A.)*, vol. 19, p. 184.
- Failure to leave train within reasonable time.  
*Chicago, Kansas & Western R. Co. v. Frazer (Kan.)*, vol. 2, p. 206.
- Freight trains.  
*Texas & P. R. Co. v. Black (Tex.)*, vol. 3, p. 652.
- How relation of carrier and passenger created.  
*Farley v. Cincinnati, H. & D. R. Co. (C. C. A.)*, vol. 21, p. 404.
- Liability for injury to mail agent, sufficiency of evidence.  
*Martin v. Philadelphia & R. Ry. Co. (Pa.)*, vol. 23, p. 170.
- One boarding a train intended for a certain class of persons, to which class he does not belong, is not a passenger.  
*Fitzgibbon v. Chicago & N. W. Ry. Co. (Iowa)*, vol. 14, p. 270.
- One does not cease to be a passenger by merely leaving car to avoid danger.  
*Gradert v. Chicago & N. W. Ry. Co. (Iowa)*, vol. 20, p. 118.
- Passengers crossing track to depot is not a trespasser.  
*Girton v. Lehigh Valley R. Co. (Pa.)*, vol. 21, p. 157.
- Person on freight train, sufficiency of evidence.  
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- Person on premises with intention of engaging passage.  
*Tillett v. Lynchburg & D. R. Co. (N. Car.)*, vol. 2, p. 167.
- Person on train by mistake.  
*Lewis v. President, etc., Canal Co. (N. Y.)*, vol. 2, p. 192.
- Person riding in stock car is presumed not a passenger.  
*Chicago, R. I. & P. Ry. Co. v. Lee (C. C. A.)*, vol. 14, p. 264.
- Person with commutation ticket crossing tracks in street to take train is not.  
*Chicago & E. I. R. Co. v. Jennings (Ill.)*, vol. 22, p. 127.
- Plaintiff in action for personal injuries must prove that he is a passenger for hire where it has been denied.  
*Clark v. Louisville & N. R. Co. (Ky.)*, vol. 12, p. 293.
- Postal clerk as passenger.  
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*St. Louis & S. F. R. Co. v. Kilpatrick (Ark.)*, vol. 17, p. 212.
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*Chicago, Kansas & Western R. Co. v. Frazer (Kan.)*, vol. 2, p. 206.
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Where one boards a train intended for a class of persons to whom he does not belong, and is received by the conductor, and there is no evidence of his knowledge of limitations on the conductor's authority to receive him, the question whether he was a passenger is for the jury.

Fitzgibbon v. Chicago & N. W. Ry. Co. (Iowa), vol. 14, p. 270.

Whether passenger on train not stopping at his station is a trespasser.

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Care to be exercised by railroad company where children have license in the yard.

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Child only held to such degree of care as is reasonably to be expected of children of his age.

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Boy's capacity for contributory negligence question for jury.

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Contributory negligence of parent will bar recovery for wrongful death of child.

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Effect of contributory negligence of boy nine years of age in playing on hand car. Illinois Cent. R. Co. *v.* Wilson (Ky.), vol. 21, p. 644.

Effect of contributory negligence of boy ten years of age in walking on track, in action for his death based on violation of ordinance requiring bell to be rung.

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Evidence of brightness and intelligence of child as affecting contributory negligence, admissible.

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Evidence of brightness and intelligence of child is admissible where contributory negligence is an issue.

Atchison, T. & S. F. Ry. Co. *v.* Potter (Kan.), vol. 15, p. 660.

Fact that an eight year old boy would not have been injured had he not been a trespasser was not conclusive evidence of contributory negligence.

Tully *v.* Philadelphia, W. & B. R. Co. (Del.), vol. 20, p. 322.

Immature age of boy seventeen years of age could not be considered as bearing on the question of his contributory negligence.

Lemasters *v.* Southern Pac. Co. (Cal.), vol. 20, p. 296.

Instruction not warranted by evidence.

Geist *v.* Missouri Pac. Ry. Co. (Neb.), vol. 22, p. 364.

It is for the jury to determine what degree of care and prudence may be reasonably required of a child of tender years, from all the evidence as to his capacity, and the facts of the case on trial.

Consolidated City & C. P. Ry. Co. *v.* Carlson (Kan.), vol. 7, p. 274.

Not attributable to child sixteen months of age.

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Question for jury whether boy twelve years of age was guilty of in taking hold of electric wire after being warned of danger.

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Suit by administrator, negligence of father.

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The court will not declare, as matter of law, that a boy ten years old who crosses a street car track in a crowd of school children, just released from school, is culpably negligent because he fails to see a street car coming towards him, at a high rate of speed, without the ringing of any bell or other warning.

Consolidated City & C. P. Ry. Co. *v.* Carlson (Kan.), vol. 7, p. 274.

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- The fact that a child may not be capable of contributory negligence does not always render the defendant liable upon the mere proof of the act causing injury.
- Culbertson v. Crescent City R. Co.* (La.), vol. 6, p. 522.
- Whether child of tender years is chargeable with contributory negligence.
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- Crossings, degree of care required of children at crossings.
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- Atchison, T. & S. F. Ry. Co. v. Potter* (Kan.), vol. 15, p. 660.
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Right of indemnified party to compromise claim.

Kansas City, M. & B. R. Co. v. Southern Ry. News Co. (Mo.), vol. 14, p. 528.

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Leavitt v. Bangor & A. R. Co. (Me.), vol. 7, p. 354.

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Nosler v. Coos Bay, etc., R. & Nav. Co. (Ore.), vol. 22, p. 719.

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- Actions on.  
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- Bill for specific performance of a verbal agreement to sell and convey in fee a certain strip of land for a railroad track.  
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- Construction of.  
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- Construction of, contract for use of siding.  
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- Contracts not set aside for fraud where party claiming fraud has retained benefits.  
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- Contracts of carrier not to carry for others, in order to prevent competition, not enforceable.  
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- Contracts of railroad corporations.  
 Union Pac. Ry. Co. v. Chicago, etc., Ry. Co. (U. S.), vol. 6, p. 1.
- Contract releasing railroads from damages for killing stock in consideration of railroad's furnishing materials for fence not binding as covenant running with land, where no part of fence was to be on railroad's land.  
 Louisville & N. R. Co. v. Webster (Tenn.), vol. 22, p. 410.
- Effect of failure of servant to make full tender of benefits received under contract releasing master.  
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- Grant of use of track or bridge to other roads.  
 Union Pac. Ry. Co. v. Chicago, etc., Ry. Co. (U. S.), vol. 6, p. 2.
- Liability of carrier of live stock under contract providing that stock shall be unloaded with shipper's assistance and at his risk.  
 Cooper v. Raleigh & G. R. Co. (Ga.), vol. 18, p. 412.
- Liability of connecting carrier on unwarranted contract made by agent of initial carrier.  
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Verbal contract by railroad to maintain switch for benefit of shipper.

Warner *v.* Texas & P. R. Co. (U. S.), vol. 6, p. 696.

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Verbal promise to pay for land which a railroad company has taken possession of for its right of way with consent of owner.

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**CONTRIBUTORY NEGLIGENCE.**

*See Accidents on Track.*

*Carriers of Goods.*

*Carriers of Live Stock.*

*Carriers of Passengers.*

*Children.*

*Constitutional Law.*

*Coupling Cars.*

*Crossings.*

*Death by Wrongful Act.*

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Chicago R. I. & P. Ry. Co. *v.*

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Absence of must be pleaded.

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Accident on track, pedestrian failing to look for trains in his rear.

Southern Ry. Co. *v.* Barfield (Ga.), vol. 19, p. 702.

Apparent danger destroying self-possession.

Louisville & N. R. Co. *v.* Stewart (Ala.), vol. 21, p. 34.

Application of statute making it unnecessary to plead absence of contributory negligence in action for personal injuries.

Southern Ind. Ry. Co. *v.* Peyton (Ind.), vol. 23, p. 343.

As bar to recovery.

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Clark *v.* Louisville & N. R. Co. (Ky.), vol. 8, p. 355.

Blind persons.

Florida *v.* Williams (Fla.), vol. 5, p. 696.

Boy was not guilty of incurring danger to rescue girl.

Becker *v.* Louisville & N. R. Co. (Ky.), vol. 20, p. 803.

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## Burden of proof.

- Central Texas & N. W. Railway Co. *v.* Bush (Tex. Civ. App.), vol. 3, p. 264.  
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 Leonard *v.* Boston & A. R. R. (Mass.), vol. 13, p. 825.  
 Mobile & O. R. Co. *v.* Wilson (C. C. A.), vol. 6, p. 97.  
 Omaha St. Ry. Co. *v.* Martin (Neb.), vol. 4, p. 1.  
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 Silcock *v.* Rio Grande W. Ry. Co. (Utah), vol. 18, p. 459.  
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 Omaha St. Ry. Co. *v.* Emmin-ger (Neb.), vol. 12, p. 188.  
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 Richmond & D. R. Co. *v.* Tribble (Va.), vol. 3, p. 632.  
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 Ohio Valley R. Co. *v.* McKinley (Ky.), vol. 3, p. 443.  
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 Indianapolis St. Ry. Co. *v.* Robinson (Ind.), vol. 23, p. 628.  
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 Illinois C. R. Co. *v.* Davis (Tenn.), vol. 18, p. 708.  
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 Central of Georgia Ry. Co. *v.* Forshee (Ala.), vol. 18, p. 467.

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- Contributory negligence of passenger in riding on platform a question for jury.  
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Willingham *v.* Macon & B. Ry. Co. (Ga.), vol. 21, p. 340.

## Evidence, harmless error.

Woodward Iron Co. *v.* Andrews (Ala.), vol. 8, p. 756.

## Evidence of not considered on hearing of motion to dismiss.

Whitley *v.* Southern Ry. Co. (N. Car.), vol. 12, p. 210.

## Evidence of similar acts of contributory negligence.

Simmons *v.* Pennsylvania R. Co. (Pa.), vol. 21, p. 466.

## Evidence of speed at crossing prohibited by company's rules, admissible as tending to show absence of contributory negligence.

Davis *v.* Concord & M. R. R. (N. H.), vol. 19, p. 68.

## Failure to use reasonable care is.

Stephani *v.* Southern Pac. R. Co. (Utah), vol. 14, p. 575.

## Fully presented by instruction telling jury that plaintiff could not recover if guilty of negligence.

Louisville, etc., R. Co. *v.* Bowlds (Ky.), vol. 23, p. 553.

## Gross negligence will defeat recovery though defendant was also negligent.

Redson *v.* Michigan Cent. R. Co. (Mich.), vol. 15, p. 687.

## If not pleaded cannot be relied on.

Ward *v.* Louisville & N. R. Co. (Ky.), vol. 23, p. 462.

## Indigent wife leaving afflicted husband unattended.

Jackson *v.* Kansas City, etc., R. Co. (Mo.), vol. 19, p. 99.

## Injury caused by an endeavor to escape from an apparent danger.

Missouri, K. & T. Ry. Co. of Texas *v.* Rogers (Tex.), vol. 8, p. 141.

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## Intoxication.

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## Intoxication, instructions.

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## Intoxication of trespasser on track is no excuse.

St. Louis, I. M. & S. Ry. Co. *v.* Jordan (Ark.), vol. 13, p. 681.

## Loss of presence of mind.

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## Mitigation of Damages.

Contributory negligence may be shown in mitigation of damages for injuries partially caused by speed in violation of ordinance.

Central of Georgia Ry. Co. *v.* Tribble (Ga.), vol. 20, p. 794.

Must be proximate cause to defeat recovery.

Youngblood *v.* South Carolina & G. R. Co. (S. Car.), vol. 20, p. 622.

Must be set up in defense.

Hughes *v.* Chicago & Alton R. Co. (Mo.), vol. 2, p. 284.

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- Negligence and contributory negligence.
  - McGeary *v.* Old Colony R. Co. (R. I.), vol. 14, p. 764.
  - Neininger *v.* Cowan (C. C. A.), vol. 18, p. 492.
  - Schweinfurth *v.* Cleveland, C., C. & St. L. Ry. Co. (Ohio), vol. 15, p. 73.
- Negligence and contributory negligence at crossing.
  - Central of Georgia Ry. Co. *v.* Forshee (Ala.), vol. 18, p. 467.
- Negligence of driver.
  - Clark *v.* Wright (C. C. A.), vol. 8, p. 432.
  - Pyle *v.* Clark (C. C. A.), vol. 8, p. 432.
- No defense, in action for injury to stock, if negligence was proximate cause.
  - Sauls *v.* D. W. Alderman & Sons Co. (S. Car.), vol. 15, p. 558.
- No defense under statute creating absolute liability for failure to observe statutory precautions to prevent accidents on railroads.
  - Walton *v.* Chattanooga Rapid Transit Co. (Tenn.), vol. 19, p. 436.
- No defense where injury at crossing was inflicted willfully and maliciously.
  - Elgin, etc., Ry. Co. *v.* Duffy (Ill.), vol. 23, p. 361.
- Nonsuit.
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- Not a defense to action by trespasser to recover for injuries caused by willful negligence in ejecting him.
  - Illinois Cent. R. Co. *v.* King (Ill.), vol. 13, p. 829.
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  - Louisville & N. R. Co. *v.* Milliken (Ky.), vol. 14, p. 742.
- Person in freight house to which there was no step on leaving the house, failed to remember

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- the absence of the step: *held*, guilty of contributory negligence.
  - St. Louis, etc., R. Co. *v.* Forbes (Ark.), vol. 6, p. 788.
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  - Kennedy *v.* Southern Ry. Co. (S. Car.), vol. 21, p. 121.
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- Presumption of negligence where plaintiff had not shown himself free from fault.
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Propriety of instruction that contributory negligence is based upon, and cannot exist without negligence on defendant's part.

Union Stock-Yards Co. v. Goodwin (Neb.), vol. 12, p. 503.

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Neal v. Carolina Cent. R. Co. (N. Car.), vol. 18, p. 51.

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- Person injured by boarding train by passing over the sloping part of the platform instead of going down the steps.
- Rathgebe v. Pennsylvania R. Co. (Pa.), vol. 6, p. 288.
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- Question of fact.
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- Thompson v. Northern Pac. Ry. Co. (C. C. A.), vol. 13, p. 651.
- Reckless act not justified by fact that others have performed it.
- Wherry v. Duluth, M. & N. Ry. Co. (Minn.), vol. 4, p. 72.
- Riding on footboard of engine.
- Wilcox v. San Antonio & A. P. R. Co. (Tex. Civ. App.), vol. 3, p. 441.
- Special pleas, pleading.
- Woodward Iron Co. v. Andrews (Ala.), vol. 8, p. 755.
- Stop, look, and listen, failure to look and listen at crossing relying upon automatic signal.
- Conkling v. Erie R. Co. (N. J.), vol. 15, p. 61.
- To entitle one to recover for an injury without showing his own freedom from contributory fault, the injurious act or omission must have been purposely and intentionally committed, with a design to produce injury or under such circumstances as that its natural and reasonable consequence would be to injure others of whose situations the actor knows.
- Conner v. Citizens' St. R. Co. (Ind.), vol. 7, p. 287.
- Trespasser on track.
- Pharr v. Southern R. Co. (N. Car.), vol. 6, p. 726.
- Texas & P. Ry. Co. v. Breadow (Tex.), vol. 5, p. 483.
- When recovery not barred by.
- Gilbert v. Erie R. Co. (C. C. A.), vol. 18, p. 15.
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Killing of bicyclist at crossing.

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Knowingly using defective bridge over crossing.

Evans *v.* Charleston & W. C. Ry. Co. (Ga.), vol. 15, p. 200.

Leaving horses untied near.

Silcock *v.* Rio Grande W. Ry. Co. (Utah), vol. 18, p. 459.

Liability a question for jury where there was contributory negligence and speed in violation of ordinance.

Hutchinson *v.* Missouri Pac. Ry. Co. (Mo.), vol. 20, p. 700.

Liability of railroad company, where it fails to give signals, but deceased might have seen train.

State, to Use of Price, *v.* Cumberland & P. R. Co. (Md.), vol. 10, p. 511.

Looking and listening, special finding.

Schulte *v.* Chicago, M. & St. P. Ry. Co. (Iowa), vol. 21, p. 356.

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Cleveland, C., C. & St. L. Ry. Co. *v.* Miller (Ind.), vol. 9, p. 684.

Mitigation of damages.

Artenberry *v.* Southern Ry. Co. (Tenn.), vol. 15, p. 847.

Mitigation of damages in action for injuries partially caused by speed in violation of ordinance.

Central of Georgia Ry. Co. *v.* Tribble (Ga.), vol. 20, p. 794.

Negligence and contributory negligence, questions for jury.

Kowalski *v.* Chicago G. W. Ry. Co. (Iowa), vol. 23, p. 32.

No defense where injury was

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inflicted willfully and maliciously.

Elgin, etc., Ry. Co. *v.* Duffy (Ill.), vol. 23, p. 361.

No recovery in action for killing person at crossing where no evidence as to the presence or absence of contributory negligence.

Wieland *v.* President, etc., of D. & H. Canal Co. (N. Y.), vol. 21, p. 130.

Not contributory negligence as matter of law to cross tracks in front of approaching street car.

Schneider *v.* Market St. Ry. Co. (Cal.), vol. 23, p. 692.

Not proximate cause as matter of law.

Schneider *v.* Market St. Ry. Co. (Cal.), vol. 23, p. 692.

Obstruction of crossing.

Atchison, etc., R. Co. *v.* Cross (Kan.), vol. 8, p. 757.

Obstruction of crossing, passing around train.

Atchison, etc., R. Co. *v.* Powers (Kan.), vol. 8, p. 757.

Obstruction of view at crossing.

Walker *v.* Mercer (Kan.), vol. 18, p. 159.

Of child was for the jury.

Carmer *v.* Chicago, St. P. M. & O. Ry. Co. (Wis.), vol. 8, p. 331.

Of driver.

Clark *v.* Wright (C. C. A.), vol. 8, p. 431.

Pyle *v.* Clark (C. C. A.), vol. 8, p. 431.

One injured at crossing where he should have seen train is guilty of contributory negligence as matter of law.

Northern Pac. R. Co. *v.* Freeman (U. S.), vol. 15, p. 89.

Passing between opening in long train of cars in freight yard.

Wallace *v.* New York, N. H. & H. R. Co. (Mass.), vol. 3, p. 443.

Passing closed crossing gates.

Lake Shore, etc., Ry. Co. *v.* Ehlert (Ohio), vol. 19, p. 731.

Passing over car of train obstructing crossing is.

Barr *v.* Southern Ry. Co. (Tenn.), vol. 19, p. 261.

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Passing through obstructing train relying on statements of brakeman, question for jury.

Scott *v.* St. Louis, etc., R. Co. (Iowa), vol. 19, p. 63.

Pedestrian crossing railroad in the street where view is obstructed.

Berkeley *v.* C. & O. Ry. Co. (W. Va.), vol. 8, p. 758.

Person standing on track waiting for train to pass killed by another section backing without warning, question of his contributory negligence was for jury.

Williams *v.* Atchison, T. & S. F. R. Co. (Kan.), vol. 12, p. 370.

Plaintiff attempting to cross street stopped on defendant's track, when gong was rung by an approaching train, instead of crossing track, stepped backwards and fell into a manhole. It was held that the fall was the result of failure to use care.

Lumis *v.* Philadelphia Traction Co. (Pa.), vol. 10, p. 847.

Plaintiff's foot caught in hole in planking between defendant's tracks.

Baltimore & O. R. Co. *v.* Anderson (C. C. A.), vol. 10, p. 497.

Plaintiff relieved by defendant's default of the burden of proving his intestate was lawfully on track.

Sullivan *v.* New York, N. H. & H. R. Co. (Conn.), vol. 20, p. 108.

Plaintiff struck by one car while trying to avoid another.

Graff *v.* Detroit Citizens' St. Ry. Co. (Mich.), vol. 5, p. 447.

Presumption as to care of person killed at crossing.

Louisville & N. R. Co. *v.* Clark (Ky.), vol. 12, p. 407.

Presumption as to object of brakeman in attempting to cross track where he was killed.

Jones *v.* Flint & P. M. R. Co. (Mich.), vol. 21, p. 904.

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Presumption as to person having seen approaching train.

Wood *v.* Penn. R. Co. (Pa.), vol. 5, p. 672.

Presumption of due care by person killed at crossing.

Crawford *v.* Chicago G. W. Ry. Co. (Iowa), vol. 16, p. 628.

Presumption of where deceased drove on track in front of approaching train which he should have seen.

Hook *v.* Missouri Pac. Ry. Co. (Mo.), vol. 21, p. 787.

Question for jury.

Bard *v.* Philadelphia & R. Ry. Co. (Pa.), vol. 21, p. 782.

Consolidated Traction Co. *v.* Isley (N. J.), vol. 5, p. 457.

Cookson *v.* Pittsburgh & W. R. Co. (Pa.), vol. 6, p. 340.

Highland, etc., R. Co. *v.* Sampson (Ala.), vol. 5, p. 719.

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Mott *v.* Detroit, G. H. & M. Ry. Co. (Mich.), vol. 15, p. 113.

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Southern Pac. Co. *v.* Harada (C. C. A.), vol. 22, p. 375.

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Woehrle *v.* Minnesota Transfer Ry. Co. (Minn.), vol. 19, p. 529.

Wright *v.* Southern Pac. Co. (Utah), vol. 5, p. 560.

Question for jury where view was obstructed.

Elgin, etc., Ry. Co. *v.* Duffy (Ill.), vol. 23, p. 361.

Reliance on performance of duty to give signals, question for jury.

Smith *v.* Boston & M. R. R. (N. H.), vol. 19, p. 320.

Right to attempt to save vehicle at personal risk.

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*Burns v. Southern Ry. Co.* (S. Car.), vol. 22, p. 624.  
 Similar acts of contributory negligence.  
*Dalton v. Chicago, R. I. & P. Ry. Co.* (Iowa), vol. 21, p. 460.  
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*Gobleigh v. Grand Trunk Ry. Co.* (Vt.), vol. 5, p. 445.  
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*Gobleigh v. Grand Trunk Ry. Co.* (Vt.), vol. 5, p. 445.  
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*Vincent v. Morgan's L. & T. R. & Steamship Co.* (La. Ann.), vol. 5, p. 463.  
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*Davis v. Concord & M. R. R.* (N. H.), vol. 19, p. 68.  
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*Vincent v. Morgan's L. & T. R. & Steamship Co.* (La. Ann.), vol. 5, p. 463.  
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 Sufficiency of evidence.  
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*Smith v. Boston & M. R. R.* (N. H.), vol. 19, p. 320.  
 Sufficiency of evidence in action for injury to driver of vehicle.  
*Fairbanks v. Bangor, O. & O. Ry. Co.* (Me.), vol. 22, p. 756.  
 The negligence of a foot passenger in making such use of railroad tracks while a train is approaching from a short distance will not excuse the company if he was seen, or would have been seen had there been a lookout on the

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- engine, in time to avoid injury.  
*Baltimore & O. R. Co. v. Anderson* (C. C. A.), vol. 10, p. 497.  
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*Willet v. Michigan Cent. R. Co.* (Mich.), vol. 9, p. 18.  
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*Weller v. Chicago, M. & St. P. Ry. Co.* (Mo.), vol. 22, p. 61.  
 When contributory negligence at does not bar recovery.  
*Gilbert v. Erie R. Co.* (C. C. A.), vol. 18, p. 15.  
 Where evidence showed that deceased, in broad daylight, without looking out for cars, apparently absorbed in meditation, stepped from a bridge upon defendant's track.  
*Stewart v. New York, N. H. & H. R. Co.* (Mass.), vol. 10, p. 520.  
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First occupant of two railroads whose lines cross.

Kushequa R. Co. *v.* Pittsburgh, etc., R. Co. (Pa.), vol. 23, p. 160.

Judicial notice of advantage to railroad and electric line crossing it of gates and watchmen.

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Negligence of engineer in attempting to cross in front of train having right of way.

Davis *v.* Houston & S. Ry. Co. (La.), vol. 22, p. 751.

Police power with respect to the extension of streets over right of way.

Chicago, M. & St. P. Ry. Co. *v.* City of Milwaukee (Wis.), vol. 9, p. 537.

Railroads may be compelled to furnish interlocking devices under Iowa Code, sec. 2063.

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Rights as between two intersecting railroads.

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Sufficiency of petition for appointment of grade crossing commissioners.

In re Grade Crossing Com'rs of City of Buffalo (N. Y.), vol. 21, p. 746.

Whether avoidable is question for court.

Williams Val. R. Co. v. Lykens & W. Val. St. Ry. Co. (Pa.), vol. 16, p. 718.

Highways, duty of railway as to leaving highway in good condition.

Sutton v. Chicago, etc., R. Co. (Wis.), vol. 10, p. 100.

Highways, duty to construct bridge.

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Highways, railroad's right to compensation where street is constructed across its right of way.

Paterson, N. & N. Y. R. Co. v. Mayor, etc., of City of Newark (N. J.), vol. 10, p. 182.

**Imputable negligence.**

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**Injury to cattle.**

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**Injury to street car passenger at railroad crossing, concurring negligence.**

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**Invitation to cross.**

Fennell v. Harris (Pa.), vol. 9, p. 709.

**Killing of stock.**

Alabama Midland Ry. Co. v. Gassett (Ga.), vol. 5, p. 607.

Mesic v. Atlantic & N. C. R. Co. (N. Car.), vol. 7, p. 770.

**Knowledge of plaintiff's danger.**

Wherry v. Duluth, M. & N. Ry. Co. (Minn.), vol. 4, p. 72.

Liability a question for jury, unless no recovery can be had upon any view which can be taken of the facts which the evidence tends to establish.

Davis v. Concord & M. R. R. (N. H.), vol. 19, p. 68.

**Liability for injury to bicyclist caused by failure to keep bridge in repair.**

Sonn v. Erie R. Co. (N. J.), vol. 22, p. 389.

**Liability for injury to trespasser induced to pass through obstructing trains by statements of brakeman.**

Davis v. Concord & M. R. R. (N. H.), vol. 19, p. 68.

**Liability of railroad for collision with train of another road.**

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Liability of railroad for negligence of independent contractor in repairing crossing.

Deming v. Terminal Ry. of Buffalo (N. Y.), vol. 23, p. 815.

Liability of railroad for servant's error of judgment in sudden emergency at crossing.

Lewis v. Long Island R. Co. (N. Y.), vol. 18, p. 1.

Liability where contributory negligence and negligence after plaintiff's peril.

Memphis & C. R. Co. v. Martin (Ala.), vol. 23, p. 683.

Licenses, company's duty to.

Devoe v. New York, O. & W. Ry. Co. (N. J.), vol. 15, p. 124.

**Lights.**

Negligence in backing locomotive over crossing with no light on tender except trainman's lantern.

Sullivan v. New York, N. H. & H. R. Co. (Conn.), vol. 20, p. 108.

Ordinance requiring railway to light crossing.

Cleveland, C., C. & St. L. Ry. Co. v. City of Connersville (Ind.), vol. 9, p. 195.

Sufficiency of finding as to sufficiency of train light.

Sullivan v. New York, N. H. & H. R. Co. (Conn.), vol. 20, p. 108.

**Lookouts.**

Central of Georgia Ry. Co. v. Forshee (Ala.), vol. 18, p. 467.

Johnson v. Great Northern Ry. Co. (N. Dak.), vol. 11, p. 76.

Care required in backing train at crossing at populous place.

Downing v. Morgan's L. & T. Ry. & S. S. Co. (La.), vol. 20, p. 412.

Duty to keep lookout on rear of train.

Green v. Chicago & W. M. R. Co. (Mich.), vol. 6, p. 317.

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Duty to look after travelers near crossing, to avoid frightening horses.

*Inabnett v. St. Louis, etc., Ry. Co. (Ark.)*, vol. 20, p. 590.

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*Bradley v. Ohio River & C. Ry. Co. (N. Car.)*, vol. 18, p. 340.

Duty to maintain where track is used as footpath.

*Morgan v. Wabash R. Co. (Mo.)*, vol. 20, p. 372.

Duty to station lookout while switching cars at.

*Florida Cent. & P. R. Co. v. Foxworth (Fla.)*, vol. 13, p. 469.

Failure of company to have lookout on rear of backing train is independent cause of injuries of one injured while going over trestle habitually used as a crossing.

*Malmstrom v. Northern Pac. Ry. Co. (Wash.)*, vol. 12, p. 329.

Lookout at rear of car.

*Cookson v. Pittsburg & W. R. Co. (Pa.)*, vol. 6, p. 339.

Lookout must be kept while switching cars at crossing in populous city.

*Steele v. Northern Pac. Ry. Co. (Wash.)*, vol. 15, p. 129.

Lookout on rear of train.

*Green v. Chicago & W. M. R. Co. (Mich.)*, vol. 6, p. 317.

Negligence, question for jury.

*Sullivan v. New York, N. H. & H. R. Co. (Conn.)*, vol. 20, p. 108.

Statutory immunity from keeping watch at crossing does not relieve the company from the exercise of reasonable care.

*St. Louis, etc., Ry. Co. v. Stewart (Ark.)*, vol. 20, p. 571.

The negligence of a foot passenger in making such use of railroad tracks while a train is approaching from a short distance will not excuse the company if he was seen, or would have been

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seen had there been a lookout on the engine, in time to avoid injuring him.

*Baltimore & O. R. Co. v. Anderson (C. C. A.)*, vol. 10, p. 497.

**Master and Servant.**

Fellow-servant rule not available where employee sustained injury on crossing after working hours.

*Sullivan v. New York, N. H. & H. R. Co. (Conn.)*, vol. 20, p. 108.

Liability of company for injuries at crossing caused by unauthorized use of hand car by employee.

*Branch v. International & G. N. R. Co. (Tex.)*, vol. 12, p. 378.

Servant at work on track at crossing cannot rely on rule of master requiring lookout on rear of car backing over crossing.

*Carlson v. Cincinnati, S. & M. R. Co. (Mich.)*, vol. 14, p. 803.

Measure of care required of railroads by sec. 1, ch. 4071, Laws 1891, of Florida.

*Morris v. Florida Cent. & P. R. Co. (Fla.)*, vol. 22, p. 559.

Mere fact that crossing is dangerous does not prove negligence.

*Edwards v. Atlantic Coast Line R. Co. (N. Car.)*, vol. 23, p. 38.

Mere operation of street car at crossing so as to render it dangerous for person about to cross not negligence.

*Stafford v. Chippewa Val. Elec. R. Co. (Wis.)*, vol. 23, p. 364.

Mutual duty of company and traveler.

*Rafferty v. Erie R. Co. (N. J.)*, vol. 21, p. 778.

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- Negligence.  
*McElroy v. Georgia, etc., R. Co. (Ga.)*, vol. 5, p. 697.  
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*Central of Georgia Ry. Co. v. Forshee (Ala.)*, vol. 18, p. 467.  
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*Johnson v. Great Northern Ry. Co. (N. Dak.)*, vol. 11, p. 76.  
*Neininger v. Cowan (C. C. A.)*, vol. 18, p. 492.  
 Negligence and contributory negligence, question for jury.  
*Johnson v. Great Northern Ry. Co. (N. Dak.)*, vol. 11, p. 76.  
*St. John v. New York Cent. & H. R. R. Co. (N. Y.)*, vol. 22, p. 728.  
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*Herbert v. Southern Pac. Co. (Cal.)*, vol. 11, p. 94.  
 Negligence, evidence that one was killed by a train backing without warning at a point habitually used as a crossing is sufficient to take case to jury.  
*Cox v. Norfolk & C. R. Co. (N. Car.)*, vol. 12, p. 390.  
 Negligence of company as to obstruction of view a question of fact.  
*Missouri, K. & T. Ry. Co. of Texas v. Rogers (Tex.)*, vol. 8, p. 141.  
 Negligence of servant in operating hand car used without authority does not render master liable.  
*Branch v. International & G. N. R. Co. (Tex.)*, vol. 12, p. 378.  
 Negligence, view obstructed by trees and bushes.  
*Atchison, T. & S. F. R. Co. v. Willey (Kan.)*, vol. 6, p. 565.  
 Notice of injury required by statute must be given.  
*Nickerson v. New York, N. H. & H. R. Co. (Mass.)*, vol. 21, p. 806.

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- Not necessarily negligence to obstruct crossing by train, for a few minutes in order to transact business.  
*Miller v. Wellington & P. R. Co. (N. Car.)*, vol. 20, p. 557.  
 Obstruction of crossing by railroad, construction of statute imposing penalty.  
*Simon v. Baltimore & O. R. Co. (Pa.)*, vol. 3, p. 654.  
 Opening between cars as invitation to cross.  
*Weldon v. Philadelphia, W. & B. R. Co. (Del.)*, vol. 13, p. 759.  
 Ordinance limiting speed admissible in evidence.  
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 Overhead crossing where street railway intersects with railroad.  
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 Pleading right to pass over, departure.  
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*Cape May, D. B. & S. P. R. Co. v. City of Cape May (N. J.)*, vol. 6, p. 329.  
 Presumption as to whether opening between cars is an invitation to cross.  
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Application of Pennsylvania statute giving railroad right to remove crossing on right of way.

Mt. Pleasant Coal Co. *v.* Delaware, etc., R. Co. (Pa.), vol. 23, p. 568.

Care due from company at.

Southern Ry. Co. *v.* Barbour (Ky.), vol. 15, p. 192.

Conveyance of right of way requiring the construction of suitable crossing.

Hamlin *v.* New York, N. H. & H. R. Co. (Mass.), vol. 4, p. 546.

Duty to maintain private crossing built by company.

Willingham *v.* Macon & B. Ry. Co. (Ga.), vol. 21, p. 340.

Grantee not entitled to way of necessity between parts of his land divided by strip condemned by railroad.

Atchison, T. & S. F. Ry. Co. *v.* Conlon (Kan.), vol. 22, p. 76.

Implied invitation to public to use private crossing renders company liable for injury caused by defect therein.

Southern Ry. Co. *v.* Hooper (Ga.), vol. 17, p. 752.

New location of right of way does not extinguish crossing.

Hamlin *v.* New York, N. H. & H. R. Co. (Mass.), vol. 4, p. 546.

Section 2220 et seq. of Civil Code of Georgia not applicable to private crossing not established by law.

Willingham *v.* Macon & B. Ry. Co. (Ga.), vol. 21, p. 340.

Proximate cause of accident at crossing obstructed by cars.

Southern Ry. Co. *v.* Prather (Ala.), vol. 14, p. 832.

Question for jury whether duty to keep crossing in good condition required company to cover with snow.

Dickey *v.* Boston & M. R. R. (N. H.), vol. 19, p. 258.

Railroad allowing a hedge and grove of trees upon its right

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of way to obstruct view at crossing.

Atchison, T. & S. F. R. Co. *v.* Willey (Kan.), vol. 6, p. 565.

Railroad company in piling cinders on public highway near crossing was guilty of negligence.

Illinois Cent. R. Co. *v.* Griffin (Ill.), vol. 17, p. 767.

Reciprocal duties of street railways and drivers of vehicles.

Moore *v.* Charlotte Electric St. Ry. Co. (N. Car.), vol. 22, p. 785.

Restoration of highway a continuing duty.

City of Charlottesville *v.* Southern Ry. Co. (Va.), vol. 16, p. 600.

Right of way at street railway crossings.

New Jersey Electric Ry. Co. *v.* Miller (N. J.), vol. 6, p. 519.

Right of way between train and vehicle at railroad crossing.

Wilson *v.* Southern Pac. Co. (Utah), vol. 4, p. 40.

Right of way, stationary trains and highway travelers.

Allen *v.* Boston & M. R. R. (Me.), vol. 19, p. 729.

Right to cross streets does not confer exclusive right of crossing.

Chicago, B. & O. R. Co. *v.* Beatrice Rapid-Transit & Power Co. (Neb.), vol. 4, p. 325.

Road not public, application of Georgia Code with regard to crossings.

Comer *v.* Shaw (Ga.), vol. 5, p. 697.

**Signals.**

Green *v.* Southern Pac. Co. (Cal.), vol. 13, p. 511.

Harper *v.* Barnard (Iowa), vol. 5, p. 697.

Louisville & N. R. Co. *v.* Ward (Ky.), vol. 10, p. 544.

Missouri Pac. Ry. Co. *v.* Moffatt (Kan.), vol. 3, p. 488.

Schneider *v.* Chicago, M. & St. P. Ry. Co. (Wis.), vol. 11, p. 81.

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A complaint alleging a failure to give signals, sufficiently alleges negligence of defendant in an action for injuries at a crossing; and a general allegation of freedom from fault is a sufficient denial of plaintiff's contributory negligence; but it must affirmatively appear in the complaint that the negligence of the defendant was the proximate cause of plaintiff's injury.

Baltimore & O. S. W. R. Co. *v.* Young (Ind.), vol. 6, p. 349.

Admissibility of evidence to show failure to give statutory crossing signals, where child was killed beyond crossing.

Mason *v.* Southern Ry. Co. (S. Car.), vol. 19, p. 83.

A finding that the statutory signals were not given at a crossing, not being sustained by the evidence, was erroneous.

Sutton *v.* Chicago, etc., R. Co. (Wis.), vol. 10, p. 100.

A person approaching a railroad crossing has a right to presume that the company will give the statutory signals, and if, after using due care, he can neither see nor hear an approaching train, he is justified in presuming that he can cross in safety.

Baltimore & O. S. W. Ry. Co. *v.* Conoyer (Ind.), vol. 9, p. 348.

Applicability of rule requiring, to case of frightened teams.

Missouri, K. & T. Ry. Co. of Texas *v.* Magee (Tex.), vol. 15, p. 186.

Application of Code of Tenn., secs. 1574, 1576, making railroads absolutely liable for injuries where there is failure to give signals, to cases where injury is inflicted after person was seen to leave track.

Louisville & N. R. Co. *v.* Truett (C. C. A.), vol. 23, p. 823.

A railroad company can be

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required to give such signals only of the approach of trains as the legislature has prescribed, unless the crossing has some peculiarly dangerous feature, occasioned by the act of the company itself in constructing its road or buildings.  
Philadelphia & N. R. Co. *v.* State (N. J.), vol. 9, p. 241.

Burden of proof as to whether they were given in action for killing stock at crossing.

Central *v.* Georgia Ry. Co. *v.* Wood (Ala.), vol. 20, p. 906.

Character of signals required.

Tessmer *v.* New York, N. H. & H. R. Co. (Conn.), vol. 15, p. 164.

Comparative weight of affirmative and negative testimony.

Haun *v.* Rio Grande W. Ry. Co. (Utah), vol. 19, p. 370.

Compliance with ordinance requiring signals and lights, question for jury.

Weller *v.* Chicago, M. & St. P. Ry. Co. (Mo.), vol. 22, p. 61.

Compliance with statute in regard to signals does not excuse negligence.

English *v.* Southern Pac. Co. (Utah), vol. 4, p. 63.

Constitutionality of statute providing penalty for failure to give.

State, Cass County, *v.* Missouri Pac. Ry. Co. (Mo.), vol. 15, p. 175.

Construction of statute.

State, Cass County, *v.* Missouri Pac. Ry. Co. (Mo.), vol. 15, p. 175.

Contributory negligence as affected by failure to give.

Herbert *v.* Southern Pac. Co. (Cal.), vol. 11, p. 94.

Country crossings.

Georgia R. & B. Co. *v.* Cromer (Ga.), vol. 12, p. 318.

Duty to give signals where view is obstructed.

Croft *v.* Chicago G. W. Ry. Co. (Minn.), vol. 11, p. 652.



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Duty where signals frighten horses.

Louisville & N. R. Co. v. Smith (Ky.), vol. 15, p. 613.

Effect of failure to give signals at public crossing in action for injury at private crossing.

Philadelphia & B. C. R. Co. v. Holden (Md.), vol. 22, p. 192.

Effect of failure to give where injured person was not guilty of contributory negligence, under S. Car. Rev. St., sec. 1685.

Hutto v. South Bound R. Co. (S. Car.), vol. 22, p. 724.

Effect of failure to signal on liability for killing person sitting at end of cross-tie between crossings.

McArver v. Southern Ry. Co. (N. Car.), vol. 23, p. 772.

Effect of obstacle on signals provable by tests made under similar conditions.

Missouri Pac. Ry. Co. v. Moffatt (Kan.), vol. 3, p. 488.

Evidence of failure to give signals.

Lamoureux v. New York, N. H. & H. R. Co. (Mass.), vol. 9, p. 245.

Evidence of other failures to give inadmissible.

Chicago, R. & T. Ry. Co. v. Porterfield (Tex.), vol. 12, p. 383.

Evidence that signals were maintained at other crossings.

McGovern v. Smith (Vt.), vol. 23, p. 690.

Evidence to show they would have been heard, if given.

Haun v. Rio Grande W. Ry. Co. (Utah), vol. 19, p. 370.

Failure to comply with statutory requirements and thereby frightening horse.

Atlanta, K. & N. Ry. Co. v. Durham (Ga.), vol. 16, p. 606.

Failure to give, at permissive crossing.

Bradley v. Ohio River & C. Ry. Co. (N. Car.), vol. 18, p. 340.

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Failure to give, negligence per se.

Bowen v. Southern Ry. Co. (S. Car.), vol. 18, p. 331.

Failure to give signals.

Central Texas & N. W. R. Co. v. Nycum (Tex. Civ. App.), vol. 3, p. 435.

Faust v. Philadelphia & R. Ry. Co. (Pa.), vol. 15, p. 146.

Louisville & N. R. Co. v. Vittitoe (Ky.), vol. 8, p. 666.

Miller v. Terre Haute & I. R. Co. (Ind.), vol. 3, p. 442.

Texas & P. R. Co. v. Spradling (U. S.), vol. 3, p. 435.

Failure to give signal as affecting contributory negligence of traveler.

Swanso v. Central R. Co. of New Jersey (N. J.), vol. 16, p. 624.

Failure to give signals as proximate cause.

Strother v. South Carolina, etc., R. Co. (S. Car.), vol. 5, p. 430.

Failure to give signal for crossings where person injured knew that train was approaching not negligence.

Louisville & N. R. Co. v. Penrod (Ky.), vol. 17, p. 759.

Failure to give signals will not excuse failure to stop, look and listen.

Gahagan v. Boston & M. R. R. (N. H.), vol. 23, p. 141.

Failure to give statutory signals and excessive speed as affecting contributory negligence at.

Crawford v. Chicago G. W. Ry. Co. (Iowa), vol. 16, p. 628.

Failure to give statutory signals, as affecting contributory negligence in failing to stop, look and listen.

Hunter v. Montana Cent. Ry. Co. (Mont.), vol. 16, p. 615.

Failure to look and listen at crossing, relying upon automatic signal.

Conkling v. Erie R. Co. (N. J.), vol. 15, p. 61.

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- Failure to observe statutory precaution at crossing causing injury to person near crossing.  
*Florida Cent. & P. R. Co. v. Foxworth* (Fla.), vol. 13, p. 469.
- Failure to observe statutory precautions causing injury to person near crossing.  
*Florida Cent. & P. R. Co. v. Foxworth* (Fla.), vol. 13, p. 496.
- Failure to observe statutory rule as to, does not render company liable for killing stock beyond crossing.  
*Southern Ry. Co. v. New* (Ga.), vol. 14, p. 19.
- Failure to ring bell immaterial where whistle was heard.  
*Hutchinson v. Missouri Pac. Ry. Co.* (Mo.), vol. 20, p. 700.
- Failure to sound whistle, attempting to cross in front of approaching train.  
*Helm v. Louisville & N. R. Co.* (Ky.), vol. 3, p. 440.
- Injuries to stock.  
*Graybill v. Chicago, etc., Ry. Co.* (Iowa), vol. 20, p. 178.
- Instructions as to effect of failure to give.  
*Schweinfurth v. Cleveland, C., C. & St. L. Ry. Co.* (Ohio), vol. 15, p. 73.
- In the absence of proof to the contrary, the jury may infer that the accident was the result of the company's failure to give signals, and not the result of negligence on the part of the person killed, when the evidence is to the effect that the latter was seen driving at a trot a mile and a half from the station, and was then awake, as he turned to one side to let a person pass, and when crossing the track was killed by an extra train.  
*Lamoureux v. New York, N. H. & H. R. Co.* (Mass.), vol. 9, p. 245.
- Liability of company for failure of servant to give.  
*State, Cass County, v. Missouri Pac. Ry. Co.* (Mo.), vol. 15, p. 175.

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- Liability of railroad company which fails to give statutory signals, where traveler was guilty of gross contributory negligence.  
*Strother v. South Carolina, etc., R. Co.* (S. Car.), vol. 5, p. 431.
- Liability of railroad company which fails to give statutory signals though deceased was negligent.  
*McManamee v. Missouri, etc., R. Co.* (Mo.), vol. 5, p. 474.
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- Necessity of giving statutory signals at farm crossings.  
*Czech v. Great Northern Ry. Co.* (Minn.), vol. 7, p. 374.
- Negative evidence.  
*Mackrall v. Omaha & St. L. R. Co.* (Iowa), vol. 19, p. 59.
- Negative evidence as to whether signals were given.  
*Edwards v. Atlantic Coast Line R. Co.* (N. Car.), vol. 23, p. 38.
- Negligence in backing train without giving signals, question for jury.  
*Hecker v. Oregon R. Co.* (Ore.), vol. 23, p. 33.
- Nonsuit should not have been granted where train was obstructed in violation of ordinance and there was failure to give signals before starting.  
*Burns v. Southern Ry. Co.* (S. Car.), vol. 22, p. 624.
- No recovery where company has complied with all of the statutory requirements.  
*Artenberry v. Southern Ry. Co.* (Tenn.), vol. 15, p. 847.
- Not intended for protection of person on track for his own convenience elsewhere than at crossing.  
*Huff v. Chesapeake & O. Ry. Co.* (W. Va.), vol. 17, p. 762.
- Omission of statutory signals as proximate cause of injury.  
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- Pleading negligence for failing to give.
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  - Louisville & N. R. Co. *v.* Bodine (Ky.), vol. 19, p. 551.
- Proximate cause, neglect in giving signal.
  - Wragge *v.* South Carolina & G. R. Co. (S. Car.), vol. 4, p. 639.
- Question for jury whether failure to give is negligence under statute of Utah.
  - Haun *v.* Rio Grande W. Ry. Co. (Utah), vol. 19, p. 370.
- Question for jury whether failure to give was proximate cause of injury.
  - Hutto *v.* South Bound R. Co. (S. Car.), vol. 22, p. 724.
- Rate of speed and signals at country crossings, negligence as to, questions for jury.
  - Georgia R. & B. Co. *v.* Cromer (Ga.), vol. 12, p. 318.
- Recovery of fines for failure to give statutory signals.
  - Commonwealth *v.* Louisville & N. R. Co. (Ky.), vol. 6, p. 61.
- Reliance on performance of duty not contributory negligence.
  - Woehrle *v.* Minnesota Transfer Ry. Co. (Minn.), vol. 19, p. 529.
- Required by statute.
  - Harper *v.* Barnard (Iowa), vol. 5, pp. 696, 697.
  - McManamee *v.* Missouri, etc., R. Co. (Mo.), vol. 5, p. 474.
  - Missouri Pac. Ry. Co. *v.* Geist (Neb.), vol. 5, p. 421.
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- Rule of company may be considered by jury in determining necessity of signals.
  - Hecker *v.* Oregon R. Co. (Ore.), vol. 23, p. 33.

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  - Georgia R. & B. Co. *v.* Cromer (Ga.), vol. 12, p. 318.
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- Street railway's failure to sound gong at crossing not negligence.
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- Sufficiency of distance at which given.
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- Sufficiency of evidence as to giving of signals.
  - Bond *v.* Lake Shore & M. S. Ry. Co. (Mich.), vol. 23, p. 156.
- "Traveled place," what is under S. Car. Rev. St. 1893, sec. 1685, requiring the giving of signals before crossing.
  - Risinger *v.* Southern Ry. Co. (S. Car.), vol. 20, p. 517.
- Under statutory provisions that on approaching every crossing having a danger signal, the whistle or bell shall be sounded, the burden of proof is upon the plaintiff to show that the danger signal had been posted.
  - Alabama Great Southern R. Co. *v.* McDonough (Tenn.), vol. 5, p. 169.

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Unmanageable team, proximate cause.

*Stahl v. Lake Shore & M. S. Ry. Co.* (Mich.), vol. 11, p. 90.

Variance in action to recover penalty for failure to give.  
*St. Louis, I. M. & S. Ry. Co. v. State* (Ark.), vol. 22, p. 753.

Violation of ordinance requiring ringing of bell not negligence per se.

*Stafford v. Chippewa Val. Elec. R. Co.* (Wis.), vol. 23, p. 364.

Where a railroad train is stationary across a highway the bell must be rung and the whistle blown for at least half a minute before it is started in order to comply with the law of South Carolina.

*Littlejohn v. Richmond & D. R. Co.* (S. Car.), vol. 9, p. 873.

Where horse was killed twenty feet from public crossing a charge to the jury as to statutory requirements to sound whistle for public crossing was reversible error.

*Sims v. Southern Ry. Co.* (S. Car.), vol. 20, p. 76.

Whether failure to give is proximate cause of accident is question for jury.

*Missouri, K. & T. Ry. Co. of Texas v. Magee* (Tex.), vol. 15, p. 186.

*Schaidler v. Chicago & N. W. Ry. Co.* (Wis.), vol. 15, p. 105.

Whether failure to give statutory signals is negligence per se.

*Baltimore & O. S. W. Ry. Co. v. Conoyer* (Ind.), vol. 9, p. 348.

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*Chicago, M. & St. P. Ry. Co. v. City of Milwaukee* (Wis.), vol. 9, p. 537.

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As negligence.

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Excessive speed.

*Illinois Cent. R. Co. v. Ashline* (Ill.), vol. 9, p. 702.

Running a railroad train at a country crossing at the rate of forty miles an hour is not negligence per se.

*Sutton v. Chicago, etc., R. Co.* (Wis.), vol. 10, p. 100.

Speed at country crossing, question for jury.

*Georgia R. & B. Co. v. Cromer* (Ga.), vol. 12, p. 318.

Speed immaterial where trains could not have been stopped before reaching crossing because of speed in violation of ordinance.

*Edwards v. Atlantic Coast Line R. Co.* (N. Car.), vol. 23, p. 38.

Speed in excess of ordinance does not affect contributory negligence in failing to stop, look and listen at private crossing.

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Sufficiency of evidence as to negligent rate of speed of street car.

*Stafford v. Chippewa Val. Elec. R. Co.* (Wis.), vol. 23, p. 364.

Test of negligence in rate of speed of street car.

*Stafford v. Chippewa Val. Elec. R. Co.* (Wis.), vol. 23, p. 364.

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- Whether high rate of speed within town constitutes negligence is a question for the jury.  
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- Whether speed constituted wantonness.  
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- Burden of proof.  
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- Care to be employed by employee crossing master's road.  
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- Contributory negligence, a question of law.  
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- Contributory negligence in failing to stop and look a question of law.  
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- Contributory negligence of boy driving who failed to stop, look and listen was for jury.  
*Illinois Cent. R. Co. v. Jones* (C. C. A.), vol. 15, p. 16.
- Contributory negligence, question for jury.  
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- Driver approaching crossing with reins loose and without attempting to stop or slacken speed until horse was about to cross track.  
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- Driver's failure to do so imputable to his passenger.  
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- It was not error to instruct that a plaintiff, injured while a railroad passenger, should be given damages only sufficient to compensate her for her injury; but that her suffering in the past and probable suffering in the future and the probability of the permanency of her injuries and also any expense to which she had been put in the way of obtaining relief, should be allowed her.  
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- Admissibility of evidence as to payment of hospital expenses, in absence of allegation respecting them.  
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Illinois Cent. R. Co. v. Stewart (Ky.), vol. 21, p. 874.

Punitive damages, verdict will be disturbed as excessive, when they are allowed, only in extreme cases.

Illinois Cent. R. Co. v. Stewart (Ky.), vol. 21, p. 874.

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Sick benefits not received from company not to be considered by jury.

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Sufficiency of evidence of married woman's earning capacity.

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Value of time lost.

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Verdict for loss of leg not excessive.

Kalfur v. Broadway F. & M. Ave. R. Co. (N. Y.), vol. 12, p. 850.

Verdict for \$15,000 for loss of both legs will not be set aside as excessive where

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punitive damages were authorized.

Illinois Cent. R. Co. *v.* Stewart (Ky.), vol. 21, p. 874.

Where a female passenger through the maltreatment of the employee of a railway company was compelled to expose her person to the weather and to a number of men and received injuries which together with her excitement resulted in her having a miscarriage, a verdict of \$2500.00 is not so excessive as to create the belief that the jury were misled by passion, prejudice, or ignorance.

McKeon *v.* Chicago, M. & St. P. Ry. Co. (Wis.), vol. 8, p. 219.

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Crouse *v.* Chicago & N. W. Ry. Co. (Wis.), vol. 14, p. 780.

Plaintiff cannot claim or recover damages upon grounds of negligence other than those alleged in his petition.

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Pleading in action by one company against another to recover damages paid by the former to passenger, and alleged to have been caused by negligence of the latter.

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**DEAD WOODS.**

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**DEAF AND DUMB PERSONS.**

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# DEATH BY WRONGFUL DEATH BY WRONGFUL AOT

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*Actions.*

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Florida Cent. & P. R. Co. v. Foxworth (Fla.), vol. 13, p. 469.

Act of widow without consent of child cannot prevent its recovery for injuries and death of father.

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Missouri Pac. Ry. Co. v. Mofatt (Kan.), vol. 12, p. 397.

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Burden of proving conscious suffering in action for benefit of estate.

Sweetland v. Chicago & G. T. R. Co. (Mich.), vol. 11, p. 613.

Burden of proving negligence. St. Louis & S. F. Ry. Co. v. Townsend (Ark.), vol. 22, p. 123.

Burden of proving negligence was on plaintiff in action for death on railroad track.

St. Louis & S. F. Ry. Co. v. Townsend (Ark.), vol. 22, p. 123.

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Western & A. R. Co. v. Bass (Ga.), vol. 11, p. 608.

Contributory Negligence.

Burden of proving contributory negligence.

Consolidated Traction Co. v. Hone (N. J.), vol. 9, p. 249.

Heckle v. Southern Pac. Co. (Cal.), vol. 15, p. 584.

Schneider v. Market St. Ry. Co. (Cal.), vol. 23, p. 692.

Deceased getting upon track when he must have seen approach of train.

McManamee v. Missouri Pac. Ry. Co. (Mo.), vol. 5, p. 474.

Deceased killed by locomotive running backwards through street.

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Wilson v. Pennsylvania R. Co. (Pa.), vol. 5, p. 491.

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Louisville & N. R. Co. v. Jones (Ala.), vol. 23, p. 224.

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Boston & M. R. R. v. Hurd (C. C. A.), vol. 21, p. 674.

Presumption as to care on part of person killed in absence of evidence.

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Presumption as to contributory negligence, in action for death of employee.

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Presumption of contributory negligence where deceased drove on track in front of approaching train which he should have seen.

Hook *v.* Missouri Pac. Ry. Co. (Mo.), vol. 21, p. 787.

Presumption where deceased stepped from one street car in ample time to have crossed parallel track and and to have avoided another car coming in opposite direction.

Evansville Street R. Co. *v.* Gentry (Ind.), vol. 5, p. 500.

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Contributory negligence of parents.

St. Louis, I. M. & S. Ry. Co. *v.* Dawson (Ark.), vol. 18, p. 30.

**Damages.**

Chesapeake, etc., Ry. Co. *v.* Lang (Ky.), vol. 6, p. 779.

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May *v.* West Jersey & S. R. Co. (N. J.), vol. 13, p. 517.

Strother *v.* South Carolina R. Co. (S. Car.), vol. 5, p. 430.

Walker *v.* Lake Shore, etc., Ry. Co. (Mich.), vol. 6, p. 779.

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Jackson *v.* Consolidated Traction Co. (N. J.), vol. 5, p. 697.

Benefit accruing to adult children from decedent's life.

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Damages which a minor recovers for his father's death.

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Elements of damage.

Green *v.* Southern Pac. Co. (Cal.), vol. 13, p. 511.

Elements of damages, earning capacity under Me. St. 1891, ch. 124.

Oakes *v.* Maine Cent. R. Co. (Me.), vol. 22, p. 190.

Elements of damages in action by widow.

Florida Cent. & P. R. Co. *v.* Foxworth (Fla.), vol. 13, p. 469.

Evidence as to family of deceased.

Southern Ry. Co. in Kentucky *v.* Evans (Ky.), vol. 21, p. 809.

Evidence of decedent's earning capacity in action by administrator.

Louisville & N. R. Co. *v.* Jones (Ala.), vol. 23, p. 224.

Evidence of dependence.

Chicago, P. & St. L. R. Co. *v.* Woolridge (Ill.), vol. 13, p. 501.

Evidence of dependency of intestate's mother.

Louisville & N. R. Co. *v.* Jones (Ala.), vol. 23, p. 224.

Evidence that deceased did not contribute to support of next of kin.

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Boyden *v.* Fitchburg R. Co. (Vt.), vol. 10, p. 523.

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Loss of moral and intellectual training in action for death of father, in absence of evidence that he was a fit person to do such training.

St. Louis & S. F. Ry. Co. *v.* Townsend (Ark.), vol. 22, p. 123.

**Measure of Damages.**

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Evidence of wages received.

Oakes *v.* Maine Cent. R. Co. (Me.), vol. 22, p. 190.

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Sums expended for support of mother and sister.

Louisville & N. R. Co. *v.* Jones (Ala.), vol. 23, p. 226.

Where a constitution provides that damages may be recovered for death by wrongful act, the word damages has been held to include punitive, as well as compensatory damages.

Louisville & N. R. Co. *v.* Kelly (Ky.), vol. 7, p. 165.

Mental suffering of parents could not be recovered for.

Louisville & N. R. Co. *v.* Creighton (Ky.), vol. 15, p. 713.

Nominal damages for death.

Cox *v.* Chicago & N. W. Ry. Co. (Iowa), vol. 9, p. 604.

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Chicago, P. & St. L. R. Co. *v.* Woolridge (Ill.), vol. 13, p. 501.

Persons entitled to recover.

Atchison, T. & S. F. Ry. Co. *v.* Ryan (Kan.), vol. 21, p. 684.

Physical suffering of deceased or grief of beneficiary are not elements of damages, under Me. St. 1891, ch. 124.

Oakes *v.* Maine Cent. R. Co. (Me.), vol. 22, p. 190.

Presumption that they were sustained in action for death of husband and father.

Chicago & E. R. Co. *v.* Thomas (Ind.), vol. 21, p. 343.

Recovery for benefit expected of minor child after he should reach majority.

Texas & P. Ry. Co. *v.* Wilder (C. C. A.), vol. 13, p. 520.

Right of adult children to recover damages for the negligent killing of their father, who made them a yearly allowance not affected by fact that they inherited his estate.

Stahler *v.* Philadelphia & R. Ry. Co. (Pa.), vol. 21, p. 815.

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- Right of brothers and sisters to recover.  
*Brown v. Chicago & N. W. Ry. Co. (Wis.)*, vol. 13, p. 603.
- Right to recover death loss must be clearly given by statute.  
*Brown v. Chicago & N. W. Ry. Co. (Wis.)*, vol. 13, p. 603.
- Statutory right to recover not exclusive.  
*Brown v. Chicago & N. W. Ry. Co. (Wis.)*, vol. 13, p. 603.
- While jury may consider probable personal expenses of decedent, the failure to so instruct the jury was not error.  
*Southern Ry. Co. in Kentucky v. Evans (Ky.)*, vol. 21, p. 809.
- \$5,000 verdict cannot be held to be the result of passion and prejudice.  
*Weller v. Chicago, M. & St. P. Ry. Co. (Mo.)*, vol. 22, p. 61.
- Deceased killed by locomotive running backward through street without lookout.  
*Brunswick, etc., R. Co. v. Gibson (Ga.)*, vol. 5, p. 441.
- Determination of amount recoverable.  
*Rudiger v. Chicago, St. P., M. & O. Ry. Co. (Wis.)*, vol. 12, p. 197.
- Directing verdict.  
*Louisville & N. R. Co. v. Vittitoe (Ky.)*, vol. 3, p. 666.
- Directing verdict where absence of evidence as to cause of death of man found on track.  
*Stidham v. Chesapeake & O. Ry. Co. (Ky.)*, vol. 23, p. 162.
- Double remedy under laws of Michigan.  
*Dolson v. Lake Shore, etc., Ry. Co. (Mich.)*, vol. 23, p. 387.
- Effect in statutory action by widow and son for wrongful death of stipulation in pass on which deceased was traveling limiting carrier's liability.  
*Adams v. Northern Pac. Ry. Co. (Wash.)*, vol. 15, p. 784.

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- Effect of release executed before death.  
*Hill v. Pennsylvania R. Co. (Pa.)*, vol. 8, p. 229.
- Enforcement of foreign statute, in action for.  
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*Clune v. Ristine (C. C. A.)*, vol. 15, p. 761.
- Error in granting nonsuit.  
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- Evidence.
  - Admissibility of evidence of husband's subsequent marriage in action for death of wife.  
*Gulf, C. & S. F. Ry. Co. v. Younger (Tex.)*, vol. 8, p. 84.
  - As to number of children admissible in action for.  
*Illinois C. R. Co. v. Davis (Tenn.)*, vol. 18, p. 708.
  - As to who constituted deceased's next of kin, judicial discretion in admitting after arguments and instructions.  
*Indiana, etc., Ry. Co. v. Hendrian (Ill.)*, vol. 22, p. 392.
  - Burden of proving negligence in action for wrongful death.  
*St. Louis & S. F. Ry. Co. v. Townsend (Ark.)*, vol. 22, p. 123.
  - Declarations of person as to his symptoms, made to physician or surgeon, not for purpose of treatment, but for purpose of leading physician or surgeon to form opinion to which he may testify as witness for declarant, in suit brought by him for personal injuries, are not admissible in evidence at instance of declarant.  
*Lambertson v. Consolidated Traction Co. (N. J.)*, vol. 9, p. 355.
  - Evidence as to names and ages of children of deceased.  
*English v. Southern Pac. R. Co. (Utah)*, vol. 4, p. 63.

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- Of circumstances of surviving parent in action for death of parent.  
*Gulf, C. & S. F. Ry. Co. v. Younger* (Tex.), vol. 8, p. 84.
- Of surviving family.  
*Louisville & N. R. Co. v. Taafe* (Ky.), vol. 15, p. 693.
- Subsequent unchaste conduct of widow, in action for wrongful death of husband.  
*Kolb v. Union R. Co.* (R. I.), vol. 21, p. 811.
- That deceased left no estate.  
*Brunswick & W. R. Co. v. Wiggins* (Ga.), vol. 22, p. 588.
- To show number of children of deceased.  
*Felton v. Spiro* (C. C. A.), vol. 10, p. 865.
- Exemption from liability for death of messenger.  
*Pittsburg, C., C. & St. L. Ry. Co. v. Mahony* (Ind.), vol. 8, p. 441.
- Extraterritorial effect of Missouri statute giving right of action for.  
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- Federal jurisdiction to enforce penal statute as to.  
*Perkins v. Boston & A. R. Co.* (C. C. Mass.), vol. 13, p. 601.
- Improper width of trucks in action for killing person near track.  
*Cederson v. Oregon R. & Nav. Co.* (Ore.), vol. 22, p. 655.
- In action to recover for death of person found dead, after a collision, in footpath habitually used by the public, as the company had notice, the question of negligence was for the jury.  
*Washington v. Missouri, K. & T. Ry. Co. of Texas* (Tex.), vol. 11, p. 829.
- Inspection of tracks.  
*Cox v. Chicago & N. W. Ry. Co.* (Iowa), vol. 9, p. 604.
- Instantaneous killing of person on track, statutory cause of action.  
*Matz v. Chicago & A. R. Co.* (Mo.), vol. 10, p. 592.

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- Instruction as to measure of damages erroneous because overlooking expectation of widow's life, minority of children, marriage of daughter, and deceased's earning capacity.  
*Rouse v. Detroit Electric Ry.* (Mich.), vol. 22, p. 650.
- Insurance money, deduction from damages.  
*Tyler S. E. Railway Co. v. Rasberry* (Tex.), vol. 3, p. 376.
- Joinder of causes of action.  
*McVeay v. Illinois Central Railroad Co.* (Miss.), vol. 3, p. 371.
- Judicial knowledge of laws of sister state.  
*Ex parte Northeastern R. Co.* (S. Car.), vol. 21, p. 100.
- In re Mayo's Estate (S. Car.), vol. 21, p. 100.
- Jurisdiction of Ohio courts where death occurred in Indiana.  
*Wabash R. Co. v. Fox* (Ohio), vol. 21, p. 690.
- Jurisdiction where death was inflicted in foreign state, existence of similar foreign statute.  
*Wabash R. Co. v. Fox* (Ohio), vol. 21, p. 690.
- Killing bicyclist at crossing.  
*Kimball v. Friend* (Va.), vol. 8, p. 451.
- Killing licensee on track.  
*Adams v. Southern Ry. Co.* (C. C. A.), vol. 9, p. 747.
- Liability for intentional killing by employee guarding property.  
*Lipscomb v. Houston & T. C. Ry. Co.* (Tex.), vol. 23, p. 401.
- Liability of railroad company for personal injury to shipper's employee resulting in death, where it had furnished a defective car for freight.  
*Savannah, etc., R. Co. v. Booth* (Ga.), vol. 5, p. 612.
- Limitations of actions.  
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- Chesapeake & O. Ry. Co. v. Kelley* (Ky.), vol. 13, p. 568.

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 Limiting liability in pass on which deceased was traveling as affecting statutory action by widow and son.  
 Adams *v.* Northern Pac. Ry. Co. (Wash.), vol. 15, p. 784.  
 Petition in action for, must show that beneficiary had a pecuniary interest.  
 Chicago, R. I. & P. Ry. Co. *v.* Young (Neb.), vol. 14, p. 343.  
 Plaintiff cannot recover in an action for damages for the negligent killing of his intestate where it appears from the evidence that the death may have resulted from one of several possible causes, some of which were irreconcilable with the possibility of negligence on the part of defendant.  
 Kenneson *v.* West End St. Ry. Co. (Mass.), vol. 9, p. 445.  
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 Cameron *v.* Great Northern Ry. Co. (N. Dak.), vol. 12, p. 520.  
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 State *v.* Maine Cent. R. Co. (Me.), vol. 8, p. 758.  
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 Clark *v.* Louisville & N. R. Co. (Ky.), vol. 8, p. 355.



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Res judicata, whether recovery by personal representative of a wife for her wrongful death bars an action by the husband.  
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Right of action.  
*Chicago, B. & O. R. Co. v. Oyster* (Neb.), vol. 12, p. 655.

*McVey v. Illinois Cent. Railroad Co.* (Miss.), vol. 3, p. 371.

Right of action by parent for killing of son.

*Killian v. Southern Ry. Co.* (N. Car.), vol. 22, p. 639.

Right of action for death of husband and father survives in widow and heirs.

*Missouri, K. & T. Ry. Co. v. Elliott* (Ind. Ter.), vol. 14, p. 587.

Right of railroad to object to appointment of an executor or administrator.

*Missouri Pac. R. Co. v. Bennett's Estate* (Kan.), vol. 7, p. 534.

Statutory right of action.

*Louisville & N. R. Co. v. Williams* (Ala.), vol. 9, p. 252.

Statutory right of action as an asset of estate.

*Ex parte Northeastern R. Co.* (S. Car.), vol. 21, p. 99.

*In re Mayo's Estate* (S. Car.), vol. 21, p. 99.

Survival of right of action for.

*Missouri, K. & T. Ry. Co. v. Elliott* (C. C. A.), vol. 18, p. 715.

*St. Louis, I. M. & S. Ry. Co. v. Dawson* (Ark.), vol. 18, p. 30.

Survival of right of action under Mich. Comp. Laws, 1897, sec. 10, p. 427.

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*Cederson v. Oregon R. & Nav. Co.* (Ore.), vol. 22, p. 655.

Whether judge of relief department's certificate was an assignment of widow's right of action.

*Cowen v. Ray* (C. C. A.), vol. 21, p. 531.

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*Chicago, R. I. & P. Ry. Co. v. Young* (Neb.), vol. 14, p. 343.

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*Chicago, etc., R. Co. v. Mills* (Kan.), vol. 7, p. 770.

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Action for death of wife, proper plaintiff.

*Chattanooga Electric Ry. Co. v. Johnson* (Tenn.), vol. 8, p. 758.

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Administrator's right to maintain suit where county court set aside an order admitting a will to probate has been set aside by an agreement of all of the parties in interest.

*Louisville & N. R. Co. v. Sander* (Ky.), vol. 10, p. 528.

Capacity of New Hampshire administrator of person who had resided in Massachusetts to sue, statutes.

*Boston & M. R. R. v. Hurd* (C. C. A.), vol. 21, p. 674.

Mother's right of action for death of minor son where she has been abandoned by her husband.

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Next of kin, construction of Tennessee statute.

Freeman *v.* Illinois Cent. R. Co. (Tenn.), vol. 22, p. 49.

Next of kin, statute.

Atchison, T. & S. F. Ry. Co. *v.* Ryan (Kan.), vol. 21, p. 684.

No action at common law by father lies for instantaneous death of minor son.

Bligh *v.* Biddeford & S. R. Co. (Me.), vol. 22, p. 805.

No survival of action under Illinois statute.

Malott *v.* Shimer (Ind.), vol. 15, p. 774.

Parent must show her dependence on deceased child in order to recover for his death.

Augusta Southern R. Co. *v.* McDade (Ga.), vol. 12, p. 549.

Parent's right of action for death of minor where deceased was serving penal sentence at time of injury.

Amos *v.* Atlanta Ry. Co. (Ga.), vol. 12, p. 857.

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Pittsburg, C., C. & St. L. Ry. Co. *v.* Hosea (Ind.), vol. 14, p. 692.Pittsburg, C., C. & St. L. Ry. Co. *v.* Moore (Ind.), vol. 14, p. 678.

Wife's right of action where husband has released claims for his injury.

Hill *v.* Pennsylvania R. Co. (Pa.), vol. 8, p. 229.**DECLARATIONS.***See Death by Wrongful Act. Evidence.**Master and Servant. Res Gestæ.*

Conductor.

Barker *v.* St. Louis, I. M. & S. R. Co. (Mo.), vol. 2, p. 157.Louisville & Nashville R. Co. *v.* Ellis (Ky.), vol. 2, p. 132.

Evidence of declaration of deceased agent.

Missouri, K. & T. Ry. Co. *v.* Byrne (Ind. Ter.), vol. 13, p. 17.

If the judge is satisfied that the declarations of the deceased police officer were made in good faith they are admissible in action for illegal arrest of passenger.

Dixon *v.* New England R. R. (Mass.), vol. 22, p. 10.

Self-disserving declaration of decedent, in action to recover for injury alleged to have caused his death, is not conclusive against plaintiff.

Camden & A. R. Co. *v.* Williams (N. J. App.), vol. 11, p. 600.**DEDICATION.***See Highways.**Railroads in Streets.*

Dedication of railroad land to public use.

Frankford, etc., R. Co. *v.* Philadelphia (Pa. St.), vol. 4, p. 265.

Implied dedication of crossing over railway in street.

Evansville & T. H. R. Co. *v.* State, Town of Ft. Branch (Ind.), vol. 11, p. 278.

Right of railroad company to hold land by dedication.

Gulf, C. & S. F. Ry. Co. *v.* Milam County (Tex.), vol. 7, p. 780.

Where a person who dedicates land to public use as a highway, in such dedication, reserves to himself and his assigns the right to construct and operate a railroad therein, the public takes the highway cum onere.

Tallou *v.* Mayor, etc., of City of Hoboken (N. J.), vol. 7, p. 545.

Whether railroad can acquire land by dedication.

Southern Ry. Co. *v.* Standiford (Ky.), vol. 20, p. 154.

Whether the leaving of strips of land on either side of the depot open to the public, amounts to a dedication.

City of Chicago *v.* Chicago, Rock Island, etc., R. Co. (Ill.), vol. 1, p. 1.

**DEEDS.***See Conditions.**Evidence.**Right of Way.*

Deeds of correction and confirmation.

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Description of premises.

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Parol evidence to explain intent of.

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Missouri Pac. R. Co. v. State of Nebraska ex rel. Board of Transportation (U. S.), vol. 6, p. 157.

An order of the state board of transportation, under the provision of the act of March 31, 1887, entitled "an act to regulate railroads and prevent unjust discrimination," etc., which requires a railroad company to surrender a portion of its right of way for an elevator site to a person or corporation engaged in the buying and shipping of grain, contemplates the taking of property for mere private use, within the prohibition of the United States constitution, and is accordingly without authority and void.

Chicago, B. & O. R. Co. v. State Board of Transportation (Neb.), vol. 7, p. 349.

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*Allmon v. Chicago, P. & M. R. Co.* (Ill.), vol. 3, p. 136.

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Evidence of an assessment list made by one joint owner in which the land was valued by him at a certain sum.

*St. Louis, O. H. & C. Ry. Co. v. Fowler* (Mo.), vol. 10, p. 405.

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Proof of capital stock and net earnings of a corporation where its land is taken.

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View by jury as evidence.

*Chicago, R. I. & P. Ry. Co. v. Farwell* (Neb.), vol. 17, p. 687.

Where the tract of land sought to be condemned lies contiguous to a manufacturing city and is suitable for manufacturing purposes the jury in estimating damages may consider the value of switching facilities to the remainder of the land though there was no evidence of an offer or agreement by plaintiff to permit or provide switch connections with its tracks.

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Evidence of statutory authority to condemn railroad right of way for telegraph line.

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Admissibility of evidence of servant's knowledge of proximity of cattle chute.

*Keist v. Chicago G. W. Ry. Co.* (Iowa), vol. 16, p. 297.

Admissibility of evidence of condition of grab-iron causing injury, six days after accident.

*Jones v. New York, N. H. & H. R. Co.* (R. I.), vol. 11, p. 414.

Admissibility of expert testimony as to proper way to load cars in action for injury to employee.

*Southern Ry. Co. v. Mauzy* (Va.), vol. 20, p. 674.

Admissibility of opinion of expert as to proper construction of buildings in action for injury to employee.

*Hayes v. Southern Pac. Co.* (Utah), vol. 11, p. 419.

Admission not warranted by pleading or evidence in action for injury to employee caused by fall between cars of different height, while walking on roof.

*Benson v. New York, N. H. & H. R. Co.* (R. I.), vol. 22, p. 299.

Admission of rebutting testimony, in action for injury to employee.

*Chicago G. W. R. Co. v. Price* (C. C. A.), vol. 16, p. 324.

Assumption of risk, sufficiency of evidence.

*Walker v. McNeill* (Wash.), vol. 11, p. 738.

As to whether engineer was a careful man, in action for injury to employee.

*Hicks v. Southern Ry. Co.* (S. Car.), vol. 21, p. 217.

**EVIDENCE—Continued.**

Burden of proof on plaintiff to show negligence in action for injury to employee based on negligence in inspecting cars.

Hodges *v.* Kimball (C. C. A.), vol. 19, p. 755.

**Defects.**

Denver Tramway Co. *v.* Crumbaugh (Colo.), vol. 10, p. 875.

Defect in engine, question for jury.

Rush *v.* Spokane Falls & N. Ry. Co. (Wash.), vol. 20, p. 285.

Error in admitting in action for injury to employee cured by construction.

Illinois Cent. R. Co. *v.* Stewart (Ky.), vol. 21, p. 874.

Evidence of act as tending to show lack of judgment and presence of mind of fellow servant.

Morrow *v.* St. Paul City Ry. Co. (Minn.), vol. 12, p. 836.

Evidence of condition of appliance causing accident admissible where it appears that its condition was the same on day of accident.

Galveston, H. & H. R. Co. *v.* Bohan (Tex.), vol. 12, p. 491.

Hypothetical questions as to proper position on engine pushing cars.

Chicago & A. R. Co. *v.* Harrington (Ill.), vol. 23, p. 429.

In an action to recover for injuries received by employee through the collision of a hand car and a train where no question was raised as to the right of precedence of the train, there was no prejudice to the defendant from the exclusion of evidence as to the rules and customs on other railroads as to such precedence.

Woodward Iron Co. *v.* Herndon (Ala.), vol. 7, p. 124.

Instruction as to negative testimony in regard to giving of signals.

Louisville & N. R. Co. *v.*

**EVIDENCE—Continued.**

York (Ala.), vol. 23, p. 470.

Master's knowledge of defects.

Baxter *v.* Chicago & N. W. Ry. Co. (Wis.), vol. 16, p. 476.

Matter of common knowledge, danger of riding on hand car.

Alabama Mineral R. Co. *v.* Jones (Ala.), vol. 8, p. 383.

Negative evidence as to whether signal was given, in action for death of employee coupling cars.

Louisville & N. R. Co. *v.* York (Ala.), vol. 23, p. 470.

Notice to master of danger from appliance.

Indiana, I. & I. R. Co. *v.* Bundy (Ind.), vol. 14, p. 660.

Particulars of construction of switch in general use among other roads may not be shown, in action for injury to employee.

Indiana, I. & I. R. Co. *v.* Bundy (Ind.), vol. 14, p. 660.

Ratification of agent's contract.

Maxson *v.* Michigan Cent. R. Co. (Mich.), vol. 14, p. 823.

Release from claim for personal injuries to employee cannot be contradicted by parol evidence.

Indianapolis Union Ry. Co. *v.* Houlihan (Ind.), vol. 21, p. 916.

Release of railroad company from liability for injury to servant.

Pittsburg, C., C. & St. L. Ry. Co. *v.* Montgomery (Ind.), vol. 9, p. 792.

Rules for government of employees as evidence of injury to employee.

Caron *v.* Boston, etc., R. Co. (Mass.), vol. 5, p. 705.

Rules of defendant not admissible, in action for injury to employee, when it is not shown that plaintiff had received them or had knowledge of them.

Indiana, I. & I. R. Co. *v.* Bundy (Ind.), vol. 14, p. 660.

**EVIDENCE—Continued.**

Rules, sufficiency of to show defective condition of track and that master was chargeable with notice.

Louisville & N. R. Co. v. Victory (Ky.), vol. 12, p. 538.

Rules, sufficiency of to show master's negligence.

Lake Shore & M. S. Ry. Co. v. Andrews (Ohio), vol. 12, p. 545.

Rules, violation of evidence of negligence.

Smithson v. Chicago, G. W. Ry. Co. (Minn.), vol. 11, p. 726.

Telegraphic orders in action for death of employee resulting from collision between trains.

Rinard v. Omaha, etc., Ry. Co. (Mo.), vol. 22, p. 34.

The complaint alleged that the yard master was charged with the direction and control of all switch engines and the making up of the trains within the said yard limits of the defendant. It was held that evidence to show under whose control were the employees engaged in this work is responsive and therefore admissible.

Wilson v. Charleston & S. Ry. Co. (S. Car.), vol. 9, p. 211.

Understanding of plaintiff as to length of ties, in action by conductor for personal injury caused by their projection.

Whitcher v. Boston & M. R. Co. (N. H.), vol. 20, p. 540.

Wages paid servants.

Missouri, K. & T. Ry. Co. v. Elliott (C. C. A.), vol. 18, p. 716.

Medical books.

Bixby v. Omaha & C. B. Ry. & Bridge Co. (Iowa), vol. 13, p. 748.

Medical experts, admissibility of opinion of medical expert.

Fulmore v. St. Paul City Ry. Co. (Minn.), vol. 11, p. 636.

Minutes of meeting of directors.

Coca Bay, R. & E. R. R. Co. & Nav. Co. v. Siglin (Ore.), vol. 11, p. 714.

**EVIDENCE—Continued.**

Negligence.

Louisville & N. R. Co. v. Marbury L. Co. (Ala.), vol. 18, p. 508.

Evidence admissible under general allegation of negligence.

Highland Ave. & B. R. Co. v. Swope (Ala.), vol. 13, p. 856.

Evidence of other acts of negligence.

Konold v. Rio Grande W. Ry. Co. (Utah), vol. 17, p. 450.

Evidence of similar occurrences admissible.

Exton v. Central R. Co. of New Jersey (N. J.), vol. 14, p. 240.

Evidence of subsequent experiments admissible.

Hayes v. Southern Pac. Co. (Utah), vol. 11, p. 419.

Experiments.

Konold v. Rio Grande W. Ry. Co. (Utah), vol. 17, p. 450.

Whitcher v. Boston & M. R. Co. (N. H.), vol. 20, p. 540.

Habitual negligence.

Galveston, H. & S. A. Ry. Co. v. Davis (Tex.), vol. 12, p. 832.

Habitual negligence, evidence of one act or habitual acts of negligence.

Missouri, K. & T. Ry. Co. v. Johnson (Tex.), vol. 12, p. 824.

Habitual negligence, evidence of single act incompetent to prove.

Galveston, H. & S. A. Ry. Co. v. Davis (Tex.), vol. 12, p. 832.

In an action against a street railway for personal injuries, a photograph of a car other than the one occasioning the injury is inadmissible in evidence.

Baltimore City Pass. Ry. Co. v. Cooney (Md.), vol. 11, p. 759.

Insufficiency to show negligence.

McGeary v. Old Colony R. R. (R. I.), vol. 14, p. 764.

Model of locus in quo.

Rudiger v. Chicago, St. P., M. & O. Ry. Co. (Wis.), vol. 12, p. 196.

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- Of previous acts of negligence, in action for injury to passenger.
- Stuckey *v.* Atlantic Coast-Line R. Co. (S. Car.), vol. 20, p. 771.
- Of speed of cars at other times in action for injury on track.
- Rouse *v.* Detroit Electric Ry. (Mich.), vol. 22, p. 650.
- Other acts of carelessness in blasting.
- Central of Georgia Ry. Co. *v.* Bernstein (Ga.), vol. 20, p. 952.
- Similar acts of negligence.
- Aguilino *v.* New York, N. H. & H. R. Co. (R. I.), vol. 14, p. 314.
- Hutcherson *v.* Louisville & N. R. Co. (Ky.), vol. 15, p. 846.
- Subsequent experiments.
- Schweinfurth *v.* Cleveland, C., C. & St. L. Ry. Co. (Ohio), vol. 15, p. 73.
- Subsequent repairs of bridges.
- Bush *v.* Delaware, L. & W. R. Co. (N. Y.), vol. 21, p. 516.
- Testimony as to scene of accident and its surroundings is admissible.
- Bias *v.* Chesapeake & O. Ry. Co. (W. Va.), vol. 13, p. 616.
- Wanton negligence.
- Sloniker *v.* Great Northern Ry. Co. (Minn.), vol. 13, p. 819.
- What admissible in actions for negligence.
- Florida Cent. & P. R. Co. *v.* Mooney (Fla.), vol. 12, p. 721.
- Newly-discovered evidence as ground for new trial.
- Jones *v.* New York, N. H. & H. R. Co. (R. I.), vol. 11, p. 414.
- Objections to must be specific.
- New York, N. H. & H. R. Co. *v.* O'Leary (C. C. A.), vol. 14, p. 718.
- Ordinances, how proved.
- Jackson *v.* Kansas City, etc., R. Co. (Mo.), vol. 19, p. 99.
- Ordinances, certification.
- Central of Georgia Ry. Co. *v.* Bond (Ga.), vol. 17, p. 757.

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- Parol evidence to explain deed.
- Abraham *v.* Oregon & C. R. Co. (Ore.), vol. 17, p. 250.
- Parol evidence to prove contents of lost contracts.
- Nelson *v.* Southern Pac. Co. (Utah), vol. 14, p. 374.
- Personal Injuries.
- Admissibility of statements to physicians.
- Williams *v.* Great Northern Ry. Co. (Minn.), vol. 7, p. 230.
- Admissible to show location of highway in action for personal injuries caused by excavation made by street railway without authority.
- Nosler *v.* Coos Bay, etc., R. Co. & Nav. Co. (Ore.), vol. 22, p. 719.
- As to whether plaintiff appeared to suffer.
- Cicero & P. St. Ry. Co. *v.* Priest (Ill.), vol. 22, p. 694.
- Complaints as evidence of existing pain.
- St. Louis & S. F. R. Co. *v.* Burrows (Kan.), vol. 17, p. 678.
- Examination of urine.
- Cleveland, C., C. & St. L. Ry. Co. *v.* Huddleston (Ind.), vol. 7, p. 553.
- Exclamations of pain as.
- Mott *v.* Detroit, G. H. & M. Ry. Co. (Mich.), vol. 15, p. 113.
- Of extent of personal injuries admissible in corroboration of plaintiff's testimony.
- Illinois Cent. R. Co. *v.* Stewart (Ky.), vol. 21, p. 874.
- Result of autopsy.
- Harrison *v.* Sutter St. Ry. Co. (Cal.), vol. 8, p. 201.
- Testimony as to groans not inadmissible as of declarations in own favor.
- Cicero & P. St. Ry. Co. *v.* Priest (Ill.), vol. 22, p. 694.
- Photographs.
- Baxter *v.* Chicago & N. W. Ry. Co. (Wis.), vol. 16, p. 476.
- Denver & R. G. R. Co. *v.* Roller (C. C. A.), vol. 18, p. 595.

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- Discretion of court.
  - De Forge *v.* New York, N. H. & H. R. R. (Mass.), vol. 20, p. 492.
- Nude photographs.
  - Guhl *v.* Whitcomb (Wis.), vol. 20, p. 520.
- Photographs of scene of accident.
  - Bach *v.* Iowa Cent. Ry. Co. (Iowa), vol. 20, p. 161.
  - Hampton *v.* Norfolk & W. R. Co. (N. Car.), vol. 7, p. 510.
  - Lake Erie & W. R. Co. *v.* Wilson (Ill.), vol. 20, p. 164.
- X-ray photographs as evidence.
  - Bruce *v.* Beall (Tenn.), vol. 9, p. 841.
  - De Forge *v.* New York, N. H. & H. R. R. (Mass.), vol. 20, p. 492.
- X-ray pictures, authentication.
  - De Forge *v.* New York, N. H. & H. R. R. (Mass.), vol. 20, p. 492.
- Presumption from refusal to produce.
  - Missouri, K. & T. Ry. Co. *v.* Elliott (C. C. A.), vol. 18, p. 715.
- Privileged communication.
  - Keist *v.* Chicago G. W. Ry. Co. (Iowa), vol. 16, p. 297.
- Proving contents of books, records and papers by parol evidence.
  - Missouri, K. & T. Ry. Co. *v.* Elliott (Ind. Ter.), vol. 14, p. 587.
- Railroads in streets, admissibility of evidence showing that before cable broke, director's attention had been called to its weakened state.
  - Musser *v.* Lancaster City St. Ry. Co. (Pa.), vol. 5, p. 718.
- Railroads in streets, injury to property by railroad in street.
  - Baltimore & O. R. Co. *v.* Lersch (Ohio), vol. 14, p. 835.
- Refusal to permit testimony to be given by tenant of reduction of rent due to building of railroad.
  - Birch *v.* Lake Roland El. Ry. Co. (Md.), vol. 5, p. 640.

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- Reputation, admissibility of evidence of.
  - Galveston, H. & S. A. Ry. Co. *v.* Davis (Tex.), vol. 12, p. 832.
- Res Gestæ.
  - Bradley *v.* Ohio River & C. Ry. Co. (N. Car.), vol. 18, p. 340.
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  - Delaware, L. & W. R. Co. *v.* Ashley (C. C. A.), vol. 2, p. 383.
  - Hughes *v.* Louisville & N. R. Co. (Ky.), vol. 12, p. 560.
  - Southern Ry. Co. *v.* Wilcox (Va.), vol. 22, p. 260.
- Conversation of parties in interest as part of res gestæ.
  - Slavens *v.* Northern Pac. Ry. Co. (C. C. A.), vol. 16, p. 406.
- Statement of person acting as agent of plaintiff in loading cattle.
  - Southern Pac. Co. *v.* Arnett (C. C. A.), vol. 23, p. 794.
- Review on appeal.
  - Atchison, T. & S. F. Ry. Co. *v.* Conlon (Kan. App.), vol. 15, p. 195.
- Rules of company, in action for injury to employee.
  - Laird *v.* Chicago, etc., Ry. Co. (Iowa), vol. 7, p. 772.
- Stock, injuries to.
  - Chicago, B. & Q. R. Co. *v.* Roberts (Colo.), vol. 15, p. 572.
- Action for killing stock.
  - Louisville & W. R. Co. *v.* Hall (Ga.), vol. 14, p. 7.
- Admissibility of letter offering compromise in action for injury to stock.
  - Chicago, B. & Q. R. Co. *v.* Roberts (Colo.), vol. 15, p. 572.
- Burden of proof on defendant, under Louisiana statute to show that the killing of stock on its track was not the result of its negligence.
  - Mire *v.* Yazoo & M. Val. R. Co. (La.), vol. 21, p. 761.

**EVIDENCE—Continued.**

Conflicting testimony as to killing stock.

Quinn v. Southern Ry. Co. (Miss.), vol. 7, p. 788.

Evidence of other killings in actions for killing stock on track.

Whitmore v. Rio Grande Western Ry. Co. (Utah), vol. 23, p. 742.

Evidence of similar injuries to stock inadmissible.

Central of Georgia Ry. Co. v. Ross (Ga.), vol. 14, p. 12.

In an action to recover damages for the negligent killing of stock by a railroad company, evidence to show that signboards had been erected at its crossings and the proper signals had been given subsequent to the accident, is inadmissible.

Louisville & N. R. Co. v. Bowen (Ky.), vol. 9, p. 276.

Injury to stock, negligence. Atlanta, etc., R. Co. v. Irwin (Ga.), vol. 8, p. 768.

Blankenship v. Kanawha, etc., Ry. Co. (W. Va.), vol. 8, p. 768.

Of failure to give crossing signals, in action for injury to stock near crossing. Willingham v. Macon & B. Ry. Co. (Ga.), vol. 21, p. 340.

Ordinance limiting speed inadmissible in action for injury to stock.

Southern Ry. Co. v. Wood (Ky.), vol. 15, p. 570.

Presumption of failure to give statutory signals, in action under Alabama statute for injury to stock at crossing.

Southern Ry. Co. v. Reaves (Ala.), vol. 20, p. 784.

Prima facie evidence of ownership of track.

Central of Georgia Ry. Co. v. Wood (Ala.), vol. 20, p. 906.

Rebuttal of presumption of negligence arising from injury to stock.

Central of Georgia R. Co. v. Woolsey (Ga.), vol. 19, p. 573.

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Tax return as evidence of value of stock killed.

Southern Ry. Co. v. Tharp (Ga.), vol. 12, p. 858.

Testimony of engineer contradicted as to killing of stock.

Mobile, etc., R. Co. v. Weems (Miss.), vol. 7, p. 788.

Weight of engineer's testimony, in action for injuries to stock.

Southern Ry. Co. v. Reaves (Ala.), vol. 20, p. 784.

Where there is conflicting evidence as to question of killing stock question of negligence is for jury.

Roberds v. Mobile & O. R. Co. (Miss.), vol. 7, p. 93.

Tickets, parol evidence not admissible to vary printed conditions as to time limit on railroad tickets.

Walker v. Price (Kan.), vol. 20, p. 432.

Trespassers, wantonness on part of trainmen to trespassers on track may be shown by circumstantial evidence.

Southern Ry. Co. v. Bush (Ala.), vol. 19, p. 46.

Weight of evidence, question for jury.

Allen v. Boston & M. R. R. (Me.), vol. 19, p. 729.

Gradert v. Chicago & N. W. Ry. Co. (Iowa), vol. 20, p. 118.

Haun v. Rio Grande W. Ry. Co. (Utah), vol. 19, p. 370.

**Witnesses.**

Admissibility of evidence of bias of witness.

Shaw v. Chicago & G. T. Ry. Co. (Mich.), vol. 18, p. 131.

Admissibility of evidence to sustain character of witness who has been impeached.

Warfield v. Louisville & N. R. Co. (Tenn.), vol. 17, p. 135.

Attacking credibility of witness.

Dampman v. Pennsylvania R. Co. (Pa. St.), vol. 2, p. 383.

Competency of employees accused of negligence.

Louisville & N. R. Co. v. Kelly (Ky.), vol. 7, p. 166.

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- Credibility of plaintiff's testimony.
- Chicago & E. R. Co. *v.* Meech (Ill.), vol. 7, p. 667.
- Effect of failure to produce witnesses.
- Central of Georgia Ry. Co. *v.* Bernatein (Ga.), vol. 20, p. 952.
- Harmless error in instruction as to credibility of witness.
- Cicero & P. St. Ry. Co. *v.* Brown (Ill.), vol. 23, p. 930.
- Statements made by witness shortly after accident admissible as tending to impeach him.
- Alabama Min. R. Co. *v.* Jones (Ala.), vol. 15, p. 752.
- Stenographic report of former testimony of absent witness.
- Wabash R. Co. *v.* Miller (Ind.), vol. 23, p. 843.

**EXCAVATIONS.**

- See Children.*
- Master and Servant.*
- Assumption of risk by servant of falling of embankment.
- Reiter *v.* Winona & St. P. R. Co. (Minn.), vol. 11, p. 31.

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- See Constitutional Law.*

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- See Damages.*
- In action for injuries to employee.
- Rush *v.* Spokane Falls & N. Ry. Co. (Wash.), vol. 20, p. 285.
- Passion or prejudice.
- Harrison *v.* Sutter St. Ry. Co. (Cal.), vol. 8, p. 201.

**EXCURSIONS.**

- See Carriers of Passengers.*

**EXCURSION TICKETS.**

- See Tickets and Fares.*

**EXECUTION.**

- See Insolvency.*
- Mortgages.*
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- Company purchasing a railroad from a director who had pur-

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- chased it at an execution sale is not liable to the creditors of the original company for the price paid by the director at the execution sale.
- Kittel *v.* Augusta T. & G. R. Co. (C. C. N. Y.), vol. 11, p. 876.
- Sale of franchise under execution.
- Simmons *v.* Worthington (Mass.), vol. 10, p. 771.

**EXECUTORS AND ADMINISTRATORS.**

- See Death by Wrongful Act.*
- Action by representative.
- Ean *v.* Chicago, M. & St. P. Ry. Co. (Wis.), vol. 9, p. 475.
- Construction of order of inferior court appointing administrator under Ky. Civil Code of Practice.
- Louisville & N. R. Co. *v.* Edmonds (Ky.), vol. 23, p. 481.
- Right of railroad to object to the appointment of an executor or administrator.
- Missouri Pac. Ry. Co. *v.* Bennett's Estate (Kan.), vol. 7, p. 534.
- Suit by administrator, negligence of father.
- Consolidated Traction Co. *v.* Hone (N. J.), vol. 5, p. 679.

**EXEMPLARY DAMAGES.**

- See Carriers of Passengers.*
- Damages.*
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- Allowance of attorneys' fees.
- Atchison, T. & S. F. R. Co. *v.* Stewart (Kan.), vol. 2, p. 387.
- Breach of contract of carriage on excursion ticket.
- Hansley *v.* Jamesville & W. R. Co. (N. Car.), vol. 2, p. 382.
- Counsel's fees as exemplary damages where passenger was ejected.
- Winters *v.* Cowen (C. C. Ohio), vol. 12, p. 40.
- Ejection of passengers.
- Atchison, etc., Co. *v.* Long (Kan. App.), vol. 6, p. 774.
- Atlanta Consol. St. R. Co. *v.* Hardage (Ga.), vol. 2, p. 161.

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Ejection of passengers, one who boarded a train by advice of conductor of another train.

*Allen v. Wilmington & W. R. Co. (N. Car.), vol. 8, p. 257.*

Ejection of passengers, where the evidence tends to show that the conductor used insulting language, the court was not unwarranted in charging the jury upon the law of vindictive damages.

*Atlanta Consol. St. R. Co. v. Keeny (Ga.), vol. 5, p. 305.*

Ejection where malice is shown.

*Smith v. Philadelphia, W. & B. R. Co. (Md.), vol. 10, p. 264.*

Failure to carry passenger.

*Gillman v. Florida Cent. & P. R. Co. (S. Car.), vol. 12, p. 125.*

Failure to stop at destination.

*Southern Ry. Co. v. Hardin (Ga.), vol. 10, p. 250.*

Insulting conduct of servants to passenger.

*Louisville & N. R. Co. v. Keller (Ky.), vol. 12, p. 90.*

Negligence in leaving switch open, action for injury to passenger.

*Louisville, etc., R. Co. v. Kingman (Ky.), vol. 5, p. 401.*

Error where court does not explain to the jury what negligence entitles plaintiff to such damages.

*Atchison, etc., R. Co. v. Chamberlain (Okla.), vol. 5, p. 698.*

Evidence as to pecuniary condition of defendant.

*Pullman Palace-Car Co. v. Lawrence (Miss.), vol. 8, p. 59.*

Interrogatories requiring jury to specify what they find to be the actual damages, and what they allow as punitive damages.

*Atchison, etc., R. Co. v. Chamberlain (Okla.), vol. 5, p. 698.*

Kentucky statute as to wilful negligence or neglect.

*Clark v. Louisville & N. R. Co. (Ky.), vol. 8, p. 355.*

**EXEMPLARY DAMAGES—** *Continued.*

**Master and Servant.**

Liability of master for negligence of employee.

*Louisville & N. R. Co. v. Kelly (Ky.), vol. 7, p. 165.*

What must be shown to justify awarding, in action for injury to servant.

*Florida Cent. & P. R. Co. v. Mooney (Fla.), vol. 12, p. 722.*

When not warranted in action for death of employee.

*Louisville & N. R. Co. v. Sander (Ky.), vol. 10, p. 528.*

Where a constitution provides that damages may be recovered for death by wrongful act, the word damages has been held to include punitive as well as compensatory damages.

*Louisville & N. R. Co. v. Kelly (Ky.), vol. 7, p. 165.*

**EXEMPTIONS.**

*See Local Assessments.  
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**EXEMPTION FROM LIABILITY.**

*See Carriers of Passengers.  
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**EXPECTANCY.**

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**EXPENSES.**

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**EXPERIMENTS.**

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Evidence of subsequent experiments.

*Schweinfurth v. Cleveland, C., & St. L. Ry. Co. (Ohio), vol. 15, p. 73.*

**EXPERT AND OPINION EVIDENCE.**

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**EXPLOSIVES.**

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**EXPRESS COMPANIES.**

*See Bills of Lading.*  
*Carriers of Freight.*  
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*Revenue Act.*

Liability of carrier for loss of goods where value is conceded.  
 Southern Exp. Co. v. Wood (Ga.), vol. 5, p. 83.

Limitation of liability by railroad company as to carriage of express matter.

Pittsburg, C., C. & St. L. Ry. Co. v. Mahony (Ind.), vol. 8, p. 441.

Railroads discriminating against.

Kidder v. Fitchburg R. Co. (Mass.), vol. 3, p. 453.

**EXPRESS MESSENGERS.**

*See Carriers of Passengers.*

**EXPROPRIATION OF RAILWAY PROPERTY.**

Kansas City, etc., R. Co. v. Vicksburg, etc., R. Co. (La.), vol. 6, p. 212.

**EXTRA FARE.**

*See Tickets and Fares.*

**EXTRA TRAINS.**

*See Crossings.*

**FALSE IMPRISONMENT.**

*See Carriers of Passengers.*

Carriers of passengers, liability of company for false arrest and imprisonment of passenger.

Atchison, Topeka, etc., R. Co. v. Henry (Kan.), vol. 2, p. 418.

Liability of railroad companies.  
 Eichengreen v. Louisville & N. R. Co. (Tenn.), vol. 3, p. 453.

**FAMILY.**

*See Damages.*

**FARES.**

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**FARM CROSSINGS.**

*See Crossings.*  
*Private Crossings.*

**FEDERAL CONSTITUTION.**

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**FEDERAL CORPORATIONS.**

*See Parties.*

**FEDERAL COURTS.**

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*Removal of Causes.*

Postal Tel. Cable Co. v. Southern Ry. Co. (N. Car.), vol. 13, p. 417.

Construction of state statute by state court binding on.

Louisville & N. R. Co. v. Lansford (C. C. A.), vol. 18, p. 697.

Decision of questions arising under common law are not governed by state decisions.

New York, N. H. & H. R. Co. v. O'Leary (C. C. A.), vol. 14, p. 718.

Decisions of state courts based on supposed rules of common law are not binding on federal courts.

Murray v. Chicago & N. W. Ry. Co. (C. C. A.), vol. 13, p. 278.

Effect of decision of state court as to state statute.

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Engineer could recover for gross negligence of his fellow servant, the engineer of other train.

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Evidence, burden is on plaintiff, in action for injuries alleged to have been caused by fellow servant to show that he was free from fault, and when this is done, the burden is on defendant to show that his servants were not at fault.

Florida Cent. & P. R. Co. *v.* Mooney (Fla.), vol. 12, p. 721.

Evidence, fireman and engineer, burden of proof.

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Existence of relation of fellow servants a question for jury.

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Failure to furnish safe appliances is chargeable to master, not to fellow servant.

Troxler *v.* Southern Ry. Co. (N. Car.), vol. 14, p. 711.

Failure to instruct as to liability where accident occurred through negligence of fellow servant.

Atlantic Avenue R. Co. *v.* Van Dyke (C. C. A.), vol. 3, p. 623.

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Fellow-servant rule was not available where employee sustained injury on crossing after working hours.

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Injuries to employee walking near a track after finishing his day's work, from a stick of wood negligently thrown from a passing train, by a co-employee.

Fletcher *v.* Baltimore & P. R. Co. (U. S.), vol. 9, p. 229.

Knowledge of servant of incompetency of fellow servant not notice to master.

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Liability for incompetency of fellow servant.

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Liability for injury to employee of another company as affected by negligence of his fellow servant.

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Liability for negligence of.

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Liability of master for injuries to employee where fellow servant substitutes defective appliance in place of safe and suitable appliance.

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Massachusetts statute, construction.

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Master liable for injury to servant where negligence of vice principal was proximate cause, although negligence of fellow servant also contributed.

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Master's negligence in failing to maintain safe couplings must be proximate cause to warrant recovery where also negligence of fellow servant.

McCoy *v.* Norfolk & C. R. Co. (Va.), vol. 22, p. 838.

Master not liable for negligence of vice principal, except that occurring in the performance on a nonassignable duty.

Scott *v.* Chicago G. W. Ry. Co. (Iowa), vol. 20, p. 884.

Master not liable for tort of fellow servant beyond scope of his employment.

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Minnesota statute not applicable to case where servant was injured by fall of coal dislodged from tender by fellow servant.

Weisel *v.* Eastern Ry. Co. of Minn. (Minn.), vol. 17, p. 446.

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Negligence of concurring with negligence of master.

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Negligence of fellow servant concurring does not relieve master where his negligence was proximate cause.

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concurring with negligence of master.

Fluhrer *v.* Lake Shore & M. S. Ry. Co. (Mich.), vol. 17, p. 464.

Negligence of fellow servant question for jury.

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Pleading liability of company. Pittsburgh, C., C. & St. L. Ry. Co. *v.* Montgomery (Ind.), vol. 9, p. 792.

Presumption as to whether servants are fellow servants or vice principals.

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Presumption of negligence, under Florida statute, where injury resulted from act being performed by fellow servants of plaintiff, but in which he was not participating.

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Provision of South Carolina statute as to construed.

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Question as to whether employees are fellow servants is a mixed one of law and fact.

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Question for jury whether negligence of fellow servant was proximate cause, in action for injury to employee of another company.

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Receivers, liability of receivers for injuries to employees caused by negligence of fellow servants, under statutes providing for liability of railroads.

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Refined distinctions as to who are, based upon subordination of one servant to another, or upon the fact that they are engaged in different departments, should not be considered.

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Rules of master cannot change status of employees with regard to each other.

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"Same character of work" under Texas statute.

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"Same piece of work" under Texas statute.

Long *v.* Chicago, R. I. & T. Ry. Co. (Tex.), vol. 18, p. 386.

Statute not applicable to causes of action arising prior to its passage.

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Statutory provisions as to "cars" includes hand cars.

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To recover for injuries occasioned by negligence of fellow servant plaintiff must have been free from negligence.

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Validity of state statute forbidding a railroad company from entering into any agreement with its employees whereby it shall be held not liable for injuries to them and declaring such corporations liable for injuries by fellow servants.

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Brakemen are not under employers' liability act of Indiana.

Baltimore & O. S. W. Ry. Co. *v.* Little (Ind.), vol. 9, p. 427.

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Servant given charge of dynamite is.

Bush *v.* Spokane Falls & N. Ry. Co. (Wash.), vol. 20, p. 285.

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Brakeman and fireman.

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Brakeman of freight train acting as switchman and engineer of passenger train.

Swisher *v.* Illinois Cent. R. Co. (Ill.), vol. 16, p. 421.

Brakemen are fellow servants of each other.

Young *v.* West Virginia, C. & P. Ry. Co. (W. Va.), vol. 4, p. 134.

Bridge repairer riding to work and trainmen are.

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Conductor acting as brakeman and engineer are.

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- Conductor and brakeman of freight train.  
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- Conductor and car-coupler.  
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- Conductor and engineer.  
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- Conductor and other trainmen are.  
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- Conductor and section hand.  
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- Employees and brakeman are.  
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- Engineer and conductor are.  
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- Engineer and foreman, under Texas statute, although employed by different superiors.  
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- Engineer and watchman are.  
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- Engineers of different trains.  
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- Engineer of lumber train and wood cutter riding thereon to work.  
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- Engineer of wrecking engine and track-walker are, under common-law rule.  
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- Fireman and round house employees are.  
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- Fireman on passenger train is a fellow servant of engineer and conductor of freight train.  
 Maher *v.* Union Pac., D. & G. Ry. Co. (C. C. A.), vol. 20, p. 644.
- Foreman of switch crew is.  
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- Foreman and laborer.  
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- Foreman is a fellow servant of a hand under him, while both engaged in manual labor of loading cars.  
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- Motorman and employee working on track.  
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- Not liable for negligence of plaintiff's fellow switchman.  
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- One in charge of gang erecting telegraph line employed by telegraph company as fellow servant of gang employed by railroad company.  
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- Roadmaster and laborer are when working together.  
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- Section boss with men under him.  
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- Switching crews in same employment.  
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- Telegraph operators and engineers are.  
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- Telegraph operator and trainmen as fellow servants.  
*Oregon, etc., Ry. Co. v. Frost (U. S.)*, vol. 5, p. 707.
- Trainmen and employees riding in course of duty.  
*Louisville & N. R. Co. v. Stuber (C. C. A.)*, vol. 22, p. 840.
- Trainmen and laborers on roadbed.  
*Northern Pac. R. Co. v. Charles (U. S.)*, vol. 4, p. 128.
- Trainmen and section hand.  
*Hunt v. Hurd (C. C. A.)*, vol. 18, p. 741.
- Where several servants are in the same general service, but in different departments of it, though one may be inferior in position to the other, they are fellow servants, and if one of them is injured by the negligence of the other, the master is not responsible, unless on the ground of negligence in employing an unfit person for his service.  
*Benignia v. Penn. R. Co. (Pa.)*, vol. 20, p. 486.
- Whether brakeman is fellow servant of fireman a question for jury.  
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- Who Are Not Fellow Servants.**  
 Arkansas statute.  
*Kansas City, Ft. S. & M. R. Co. v. Becker (Ark.)*, vol. 16, p. 348.
- Baggage master and engineer not fellow servants.  
*Chicago & A. Ry. Co. v. Swan (Ill.)*, vol. 12, p. 675.



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- Boss and his hands loading lumber on car were not.  
 Bryan *v.* Southern Ry. Co. (N. Car.), vol. 21, p. 542.  
 Brakeman and car inspector.  
 Eaton *v.* New York, C. & H. R. R. Co. (N. Y.), vol. 18, p. 391.  
 Fulton *v.* Bullard (C. C. A.), vol. 14, p. 547.  
 Brakeman and engineer and fireman.  
 Louisiana Western Extension Ry. Co. *v.* Carstens (Tex. Civ. App.), vol. 12, p. 781.  
 Car inspector and conductor of train.  
 Illinois Cent. R. Co. *v.* Hilliard (Ky.), vol. 5, p. 539.  
 Car inspector and trainmen are not under employers' liability act of Iowa.  
 Canon *v.* Chicago, M. & St. P. Ry. Co. (Iowa), vol. 9, p. 12.  
 Engineer and brakeman.  
 Hallett *v.* New York Cent., etc., R. Co. (N. Y.), vol. 22, p. 446.  
 Expressman not fellow servant of trainman.  
 Cobb *v.* St. Louis & H. Ry. Co. (Mo.), vol. 13, p. 632.  
 Fireman and conductor.  
 Meyer *v.* Illinois Cent. R. Co. (Ill.), vol. 12, p. 694.  
 Fireman on engine and section foreman, are not.  
 Bateman *v.* Peninsular Ry. Co. (Wash.), vol. 12, p. 679.  
 Foreman and laborer.  
 Bradley *v.* Chicago, M. & St. P. Ry. Co. (Mo.), vol. 8, p. 729.  
 Foreman of wiper gang fellow servant of hands in gang.  
 Knot *v.* Southern Ry. Co. (Tenn.), vol. 12, p. 684.  
 In action by baggage master to recover for injuries alleged to have been caused by engineer's negligence, petition need not allege that they are not fellow servants.  
 Chicago & A. Ry. Co. *v.* Swan (Ill.), vol. 12, p. 674.
- Liability for injury to track repairer caused by violation of ordinance regulating the running of trains cannot be avoided on the ground that he and the trainmen were fellow servants.  
 Baltimore, etc., Ry. Co. *v.* Peterson (Ind.), vol. 20, p. 887.  
 Member of bridge crew loading timber on flat car and engineer and conductor are not.  
 Freeman *v.* Illinois Cent. R. Co. (Tenn.), vol. 22, p. 49.  
 Section boss and engineer are not.  
 Omaha & R. V. R. Co. *v.* Krayenbuhl (Neb.), vol. 4, p. 483.  
 Section foreman controlling hand car and his hands riding on same are not.  
 Illinois Cent. R. Co. *v.* Josey (Ky.), vol. 20, p. 869.  
 Servants in different departments.  
 Dobson *v.* New Orleans & W. R. Co. (La.), vol. 17, p. 404.  
 Street car conductor and car repairer.  
 Denver Tramway Co. *v.* Crumbaugh (Colo.), vol. 10, p. 875.  
 Train dispatcher and fireman.  
 Missouri, K. & T. Ry. Co. *v.* Elliott (C. C. A.), vol. 18, p. 715.  
 Train dispatcher and trainmen are not.  
 Felton *v.* Harbeson (C. C. A.), vol. 20, p. 131.  
 Workman in car shops and foreman of switch crew are not.  
 Pool *v.* Southern Pac. Co. (Utah), vol. 16, p. 551.  
 Wisconsin statute relating to, construed.  
 Medberry *v.* Chicago, M. & St. P. Ry. Co. (Wis.), vol. 17, p. 494.
- FEME COVERT.**  
*See Married Women.*

**FENCES.**

*See Cattle Guards.*  
*Children.*  
*Railroads in Streets.*  
*Stock, Injuries to.*

**Constitutional Law.**

- Constitutionality of fence law.
  - Grand Island & W. C. R. Co. *v.* Swinbank (Neb.), vol. 9, p. 870.
- Constitutionality of Montana fence law.
  - Beckstead *v.* Montana Union Ry. Co. (Mont.), vol. 9, p. 273.
- Constitutionality of statute allowing double damages for injuries to stock.
  - Kingsbury *v.* Missouri, etc., Ry. Co. (Mo.), vol. 19, p. 719.
- Constitutionality of statute requiring company to pay entire cost of division fences where right of way is donated.
  - Sleadd *v.* Southern Ry. Co. in Kentucky (Ky.), vol. 19, p. 131.
- Contributory negligence no defence to action for injury to stock under Wisconsin statute.
  - Cole *v.* Duluth, S. S. & A. Ry. Co. (Wis.), vol. 17, p. 749.
- Crossings, duty to fence at wagon crossings in cities.
  - Croft *v.* Chicago, G. W. Ry. Co. (Minn.), vol. 11, p. 652.
- Culverts, liability where hogs pass through under statute requiring tracks to be fenced.
  - Kingsbury *v.* Missouri, etc., Ry. Co. (Mo.), vol. 19, p. 719.
- Depot grounds in excess of legal limit.
  - Eaton *v.* McNeill (Ore.), vol. 8, p. 680.
- Double compensation for injuring stock.
  - Grand Island & W. C. R. Co. *v.* Swinbank (Neb.), vol. 9, p. 870.
- Duty of company to observe other statutory precautions where it has complied with fence law.
  - Mobile & O. R. Co. *v.* Tierman (Tenn.), vol. 15, p. 654.

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- Duty of railroad company to avoid injuring stock.
  - Kirk *v.* Norfolk & W. R. Co. (W. Va.), vol. 4, p. 105.
- Duty of railroad to construct division fences under Kentucky statute.
  - Owensboro & N. Ry. Co. *v.* Courts (Ky.), vol. 19, p. 125.
- Duty to fence.
  - Cornell *v.* Manistee & N. E. R. Co. (Mich.), vol. 11, p. 263.
  - McCook *v.* Bryan (Okla.), vol. 5, p. 699.
- Duty to fence against hogs unlawfully at large.
  - Kingsbury *v.* Missouri, etc., Ry. Co. (Mo.), vol. 19, p. 719.
- Duty to fence as affected by statute passed after acquisition of right of way by adverse possession.
  - Louisville & N. R. Co. *v.* Thompson (Ky.), vol. 23, p. 48.
- Duty to fence railroad yard.
  - Nickolson *v.* Northern Pac. Ry. Co. (Minn.), vol. 18, p. 682.
- Duty to fence right of way, whether Ky. St. of 1797, retrospective.
  - Ringo *v.* C. & O. R. Co. (Ky.), vol. 23, p. 271.
- Duty to fence track where two roads are parallel.
  - Marengo *v.* Great Northern Ry. Co. (Minn.), vol. 23, p. 660.
- Duty with respect to station grounds.
  - Hathaway *v.* Detroit, T. & M. Ry. Co. (Mich.), vol. 19, p. 714.
- Effect of existence of fence not required by statute.
  - Chicago, etc., R. Co. *v.* Woodworth (Ind. Ter.), vol. 4, p. 261.
- Failure to fence as prima facie evidence of negligence.
  - Jolliffe *v.* Brown (Wash.), vol. 3, p. 254.
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  - Cole *v.* Duluth, S. S. & A. Ry. Co. (Wis.), vol. 17, p. 749.
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- Mobile & O. R. Co. *v.* Tier-  
nan (Tenn.), vol. 15, p.  
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- No obligation to maintain cat-  
tle guards at intersections  
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- Obligation to construct under  
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- law where it failed to fence  
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19, p. 137.
- Under §§ 1, 2, art. 1, ch. 72,  
Comp. St. a railroad company  
is liable for injuries, caused  
by a moving train, to cattle,  
horses, sheep, or hogs upon  
the track, at a place where it  
ought to have been but was  
not fenced, although there  
was no actual collision be-  
tween the train and the ani-  
mals injured.  
Chicago, B. & Q. R. Co. *v.*  
Cox (Neb.), vol. 7, p. 379.
- Where a state statute requires  
railway companies to erect  
fences on their rights of way  
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**FIRES SET BY LOCOMOTIVES.***See Attorney's Fees.**Baggage.**Carriers of Freight.**Carriers of Goods.**Damages.**Insurance.*

Amendment of petition in action for negligence in allowing fire to spread from right of way.

*St. Louis & S. F. Ry. Co. v. Ludlum (Kan.)*, vol. 23, p. 851.

**Appliances.***Best appliances.*

*Paris, M. & S. P. R. Co. v. Nesbitt (Tex. Civ. App.)*, vol. 3, p. 448.

Burden of proof as to use of best appliances to prevent the escape of sparks.

*Alabama, G. S. R. Co. v. Johnston (Ala.)*, vol. 20, p. 909.

*White v. New York, P. & N. R. Co. (Va.)*, vol. 20, p. 588.

Defective spark arrester.

*Cleveland, C. & St. L. Ry. Co. v. Scantland (Ind.)*, vol. 14, p. 75.

Defects in engine and negligence in operation are questions for jury, where there is evidence of other fires set on same day by such engine.

*McTavish v. Great Northern Ry. Co. (N. Dak.)*, vol. 14, p. 59.

Duty as to furnishing spark arresters.

*Farrington v. Rutland R. Co. (Vt.)*, vol. 19, p. 248.

Effect of proving use of best appliances to prevent the escape of sparks.

*White v. New York, P. & N. R. Co. (Va.)*, vol. 20, p. 588.

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Inspection of spark arrester.  
*Thomas v. New York, C. & St. L. R. Co. (Pa.)*, vol. 9, p. 132.

Liability where company has spark arresters.

*Louisville & N. R. Co. v. Samuels (Ky.)*, vol. 18, p. 374.

Railroads using appliances in common use.

*Gumbel v. Illinois Cent. R. Co. (La.)*, vol. 4, p. 452.

Spark arresters.

*Louisville & N. R. Co. v. Samuels (Ky.)*, vol. 18, p. 374.

Spark arresters, care required in furnishing.

*Kimball v. Borden (Va.)*, vol. 15, p. 519.

Under statute requires railroad to show absence of negligence it exonerates itself from liability, in an action where it is claimed the fire was caused by using a certain engine, by proving that the spark arrester thereon was such as in common use.

*Peter v. Chicago & W. M. Ry. Co. (Mich.)*, vol. 15, p. 541.

**Combustibles on Right of Way.**

Accumulation of grass on right of way as negligence.  
*Richmond v. McNeill (Ore.)*, vol. 10, p. 691.

Accumulation of inflammable debris near trestle, in section subject to forest fires is negligence.

*Bateman v. Peninsular Ry. Co. (Wash.)*, vol. 12, p. 678.

Care required to keep roadbed free of combustibles.

*Waters v. Atlantic City R. Co. (N. J.)*, vol. 15, p. 525.

Combustible matter on track.  
*Watt v. Nevada Central R. Co. (Nev.)*, vol. 3, p. 659.

Duty to keep right of way free from combustibles.

*St. Louis & S. F. Ry. Co. v. Ludlum (Kan.)*, vol. 23, p. 851.

Liability for loss of house on right of way from fire originating in combustibles

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- accumulated on right of way.
- Shields v. Norfolk & C. R. Co.* (N. Car.), vol. 22, p. 635.
- Liability of company for loss by fire of wood piled by licensee on company's land.
- Boston Excelsior Co. v. Bangor & A. R. Co.* (Me.), vol. 16, p. 654.
- Liability of company where fire spreads from combustibles on right of way.
- Pittsburg, C., C. & St. L. Ry. Co. v. Indiana H. Co.* (Ind.), vol. 18, p. 83.
- Negligence in allowing accumulation of combustible matter.
- New York, P. & N. R. Co. v. Thomas* (Va.), vol. 4, p. 240.
- Pittsburg, C., C. & St. L. Ry. Co. v. Indiana H. Co.* (Ind.), vol. 18, p. 83.
- Shields v. Norfolk & C. R. Co.* (N. Car.), vol. 22, p. 635.
- Negligence in failure to burn off right of way.
- Missouri, etc., Ry. Co. v. Lycan* (Kan.), vol. 6, p. 781.

**Constitutional Law.**

- Constitutionality of statute making railroad an insurer.
- Blackmore v. Mo. Pac. Ry. Co.* (Mo.), vol. 21, p. 360.
- Statute imposing attorney's fee, constitutional.
- Atchison, T. & S. F. R. Co. v. Matthews* (U. S.), vol. 14, p. 89.
- Statute providing that fact of communication of fire by railroad shall be prima facie evidence of negligence is constitutional.
- Baltimore & O. S. W. Ry. Co. v. Tripp* (Ill.), vol. 14, p. 119.
- Validity of statutes making every railroad responsible in damages for property destroyed by fire originating from its locomotives and declaring such corporations to have an insurable

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- interest in property along their routes.
- St. Louis & S. F. R. Co. v. Mathews* (U. S.), vol. 6, p. 361.
- Cotton destroyed by fire, liability of carriers.
- Amory Mfg. Co. v. Gulf, C. & S. F. Ry. Co.* (Tex.), vol. 8, p. 472.
- Contributory Negligence.**
- Boston Excelsior Co. v. Bangor & A. R. Co.* (Me.), vol. 16, p. 655.
- Cleveland, C. C. & St. L. Ry. Co. v. Stephens* (Ill.), vol. 11, p. 268.
- Louisville & N. R. Co. v. Marbury L. Co.* (Ala.), vol. 18, p. 508.
- Matthews v. Missouri Pac. Ry. Co.* (Mo.), vol. 10, p. 673.
- Paris M. & S. P. R. Co. v. Nesbitt* (Tex. Civ. App.), vol. 3, p. 448.
- Combustibles of plaintiff near right of way.
- Louisville & N. R. Co. v. Marbury L. Co.* (Ala.), vol. 18, p. 508.
- Due care of plaintiff's employees.
- Richmond v. McNeill* (Ore.), vol. 10, p. 691.
- Duty of landowner to keep lookout for sparks.
- Cleveland, C., C. & St. L. Ry. Co. v. Scantland* (Ind.), vol. 14, p. 75.
- Duty of owner of structure on right of way to guard against fires.
- Louisville & N. R. Co. v. Samuels* (Ky.), vol. 18, p. 374.
- Effect of contributory negligence under statute creating absolute liability.
- Boston Excelsior Co. v. Bangor & A. R. Co.* (Me.), vol. 16, p. 654.
- Exposure of combustibles as contributory negligence.
- Kimball v. Borden* (Va.), vol. 15, p. 519.
- Inflammable building near right of way.
- Cleveland, C., C. & St. L. Ry. Co. v. Scantland* (Ind.), vol. 14, p. 75.

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Negligence of company need not be guarded against by adjoining owner.

Pittsburg, C., C. & St. L. Ry. Co. *v.* Indiana H. Co. (Ind.), vol. 18, p. 83.

Not a defense to action for loss by fire, where statute requires company to show absence of negligence.

Peter *v.* Chicago & W. M. Ry. Co. (Mich.), vol. 15, p. 541.

Not preventing recovery unless gross, under Massachusetts statute.

Bowen *v.* Boston & A. R. Co. (Mass.), vol. 23, p. 268.

Permitting combustibles to accumulate on land adjacent to right of way.

Atchison, T. & S. F. Ry. Co. *v.* Ireton (Kan.), vol. 23, p. 847.

Question for jury.

McTavish *v.* Great Northern Ry. Co. (N. Dak.), vol. 14, p. 59.

Question whether precautions taken by landowner inviting dangerous engine upon premises were such as reasonable care would dictate was for jury.

Liverpool & L. & G. Ins. Co. *v.* Southern Pac. Co. (Cal.), vol. 15, p. 530.

**Damages.**

Atchison, T. & S. F. R. Co. *v.* Hays (Kan. App.), vol. 11, p. 654.

Lake Erie & W. R. Co. *v.* Falk (Ohio), vol. 17, p. 751.

Matthews *v.* Missouri Pac. Ry. Co. (Mo.), vol. 10, p. 673.

Watt *v.* Nevada, etc., R. Co. (Nev.), vol. 5, p. 700.

Admissibility of evidence as to cost of building new house, in action for destruction of property by fire.

Alabama, G. S. R. Co. *v.* Johnston (Ala.), vol. 20, p. 909.

Evidence as to value of trees destroyed by fire.

Missouri, etc., Ry. Co. *v.* Lycan (Kan.), vol. 6, p. 781.

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Injury to trees by fires caused by locomotives.

Missouri, etc., Ry. Co. *v.* Lycan (Kan.), vol. 6, p. 781.

Measure of damages for injury to orchard.

Atchison, T. & S. F. Ry. Co. *v.* Emmerson (Kan.), vol. 8, p. 663.

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Watt *v.* Nevada Central R. Co. (Nev.), vol. 3, p. 659.

Opinion as to value of property.

Matthews *v.* Missouri Pac. Ry. Co. (Mo.), vol. 10, p. 673.

Recovery of attorney's fee in action for loss by fire.

St. Louis & S. F. Ry. Co. *v.* Ludlum (Kan.), vol. 23, p. 851.

Right of defendant to complain that damages were inadequate.

Central of Ga. Ry. Co. *v.* Trammell (Ga.), vol. 23, p. 856.

Showing what land produced before and after the fire.

Chicago & G. T. R. Co. *v.* Burden (Ind. App.), vol. 3, p. 448.

Statute of Ohio providing for recovery of attorney's fees as costs in action for damages caused by fire is constitutional.

Baltimore & O. R. Co. *v.* Kreager (Ohio), vol. 18, p. 99.

Testimony as to value of property destroyed, admissible.

Kansas City & O. R. Co. *v.* Rogers (Neb.), vol. 4, p. 617.

Value of hay destroyed is the market price.

Watt *v.* Nevada Central R. Co. (Nev.), vol. 3, p. 659.

Defect in engine and negligence in its operation are questions for jury where there is evidence of other fires set on same day by same engine, although statutory presumption of negligence has been overcome.

McTavish *v.* Great Northern Ry. Co. (N. Dak.), vol. 14, p. 59.

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Destroying wood illegally cut on public lands.

Northern Pac. R. Co. *v.* Lewis (U. S.), vol. 4, p. 262.

Duty of company.

Watt *v.* Nevada Central R. Co. (Nev.), vol. 3, p. 659.

West Jersey R. Co. *v.* Abbott (N. J.), vol. 8, p. 764.

Evidence.

Admissibility in evidence of diagrams of house destroyed.

Alabama G. S. R. Co. *v.* Johnston (Ala.), vol. 20, p. 909.

Admissibility of evidence as to sparks being thrown by other locomotives.

Alabama, G. S. R. Co. *v.* Johnston (Ala.), vol. 20, p. 909.

Admissibility of evidence of other fires.

Brown *v.* Benson (Ga.), vol. 10, p. 161.

New York, P. & N. R. Co. *v.* Thomas (Va.), vol. 4, p. 240.

Admissibility of evidence of other fires set on same day.

Thomas *v.* New York, C. & St. L. R. Co. (Pa.), vol. 9, p. 132.

Admissibility of evidence showing that a spark subsequently fell upon a tent standing upon ground where the barn that had been burned stood.

Matthews *v.* Missouri Pac. Ry. Co. (Mo.), vol. 10, p. 673.

Admissibility of testimony of locomotive engineers as to distance live sparks could have been carried.

Peck *v.* New York Cent. & H. R. Co. (N. Y.), vol. 22, p. 808.

Another fire originating from same engine.

Chicago & G. T. R. Co. *v.* Burden (Ind. App.), vol. 3, p. 448.

Burden of proof as to negligence of railroad where origin of fire has been fixed upon it.

Patteson *v.* Chesapeake & O. R. Co. (Va.), vol. 6, p. 389.

# **FIRES SET BY LOCOMOTIVES—Continued.**

Burden of proof as to negligence where railroad had paid judgment against it and another party, in action by railroad against latter.

Boston & M. R. R. *v.* Sargent (N. H.), vol. 21, p. 335.

Burden of proof in action for fires set by locomotive.

Alabama & V. Ry. Co. *v.* Barrett (Miss.), vol. 20, p. 141.

Burden of proving negligence.

Garrett *v.* Southern Ry. Co. (C. C. A.), vol. 18, p. 529.

Circumstantial evidence of negligence in action for fires set by locomotives.

Alabama & V. Ry. Co. *v.* Barrett (Miss.), vol. 20, p. 141.

Circumstantial evidence of origin of fire sufficient.

McGinn *v.* Platt (Mass.), vol. 19, p. 245.

Direction of verdict for defendant.

Alabama, G. S. R. Co. *v.* Taylor (Ala.), vol. 21, p. 135.

Error in admitting evidence as to distance that sparks may be thrown.

Peck *v.* New York Cent. & H. R. R. Co. (N. Y.), vol. 22, p. 808.

Evidence as to origin of fire in elevator.

Cox *v.* Vermont Cent. R. Co. (Mass.), vol. 9, p. 591.

Evidence as to ownership of property destroyed.

Alabama G. S. R. Co. *v.* Johnston (Ala.), vol. 20, p. 909.

Evidence in rebuttal to show that such engines throw sparks.

Bowen *v.* Boston & A. R. Co. (Mass.), vol. 23, p. 267.

Evidence of defects in spark arrester.

Louisville & N. R. Co. *v.* Samuels (Ky.), vol. 18, p. 374.

Evidence of existence of defects in appliances.

Brown *v.* Benson (Ga.), vol. 10, p. 161.

# **FIRES SET BY LOCOMOTIVES—Continued.**

Evidence of negligence under Ill. Rev. St., ch. 114, § 103, making fact that fire was set by locomotive, prima facie evidence of negligence.

Norris v. Baltimore & O. S. W. R. Co. (C. C. A.), vol. 22, p. 806.

Evidence of origin.

Pittsburg, C., C. & St. L. Ry. Co. v. Indiana H. Co. (Ind.), vol. 18, p. 83.

Evidence of other fires.

Galveston, H. & S. A. Ry. Co. v. Hertzig (Tex. Civ. App.), vol. 12, p. 846.

Hygienic Plate-Ice M. Co. v. Raleigh & Air-Line R. Co. (N. Car.), vol. 18, p. 78.

Pittsburg, C., C. & St. L. Ry. Co. v. Indiana H. Co. (Ind.), vol. 18, p. 83.

Evidence of other fires in action for fire caused by accumulation of combustibles on right of way.

Wabash R. Co. v. Miller (Ind.), vol. 23, p. 843.

Evidence of subsequent precautions of company admissible.

Young v. Great Northern Ry. Co. (N. Dak.), vol. 14, p. 72.

Evidence sufficient to warrant the court in submitting the case to the jury.

Brown v. Benson (Ga.), vol. 5, p. 316.

Evidence that defendant has paid damages for injuries to other property caused by same fire.

Galveston, H. & S. A. Ry. Co. v. Hertzig (Tex. Civ. App.), vol. 12, p. 846.

Evidence to show that fire was caused by sparks from engine.

Finkelston v. Chicago, etc., R. Co. (Wis.), vol. 6, p. 193.

Evidence to support charge of negligence in causing fire.

Taylor v. Pennsylvania Schuylkill Valley R. Co. (Pa. St.), vol. 4, p. 258.

## **FIRES SET BY LOCOMOTIVES—Continued.**

In action under the Illinois statute, to recover for damages caused by fire set by engine, particular facts constituting negligence need not be proven.

Chicago & A. R. Co. v. Glenny (Ill.), vol. 12, p. 839.

Instructions as to evidence.

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Ford *v.* Chicago, R. I. & P. R. Co. (Iowa), vol. 11, p. 489.

Contradictory instructions.

Lemasters *v.* Southern Pac. Co. (Cal.), vol. 20, p. 296.

**Contributory Negligence.**

Illinois Cent. R. Co. *v.* Griffin (Ill.), vol. 17, p. 767.

Louisville, etc., R. Co. *v.* Bowlds (Ky.), vol. 23, p. 553.

Mobile & O. R. Co. *v.* Wilson (C. C. A.), vol. 6, p. 97.

Care required to be exercised in order to escape imputation of contributory negligence.

Omaha St. Ry. Co. *v.* Emminger (Neb.), vol. 12, p. 188.

Erroneous instruction as to contributory negligence, in action for injury on track.

Hasie *v.* Alabama & V. Ry. Co. (Miss.), vol. 20, p. 551.

Error to refuse to instruct as to certain alleged contributory negligence which has been pleaded and as to which evidence has been introduced, and which, if

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established, is a complete defense to certain alleged negligence on defendant's part.

Louisiana Western Extension Ry. Co. *v.* Carstens (Tex. Civ. App.), vol. 12, p. 781.

Instruction that contributory negligence is based upon, and cannot exist without, negligence on defendant's part.

Union Stock-Yards Co. *v.* Goodwin (Neb.), vol. 12, p. 503.

Covered by other instructions.

Cook *v.* Los Angeles & P. Electric Ry. Co. (Cal.), vol. 23, p. 69.

Elgin, etc., Ry. Co. *v.* Duffy (Ill.), vol. 23, p. 361.

Indianapolis St. Ry. Co. *v.* Robinson (Ind.), vol. 23, p. 628.

Kowalski *v.* Chicago G. W. Ry. Co. (Iowa), vol. 23, p. 32.

**Crossings.**

Care due infirm person at crossing.

Green *v.* Southern Pac. Co. (Cal.), vol. 13, p. 511.

Care required of person crossing track.

Steele *v.* Northern Pac. Ry. Co. (Wash.), vol. 15, p. 129.

Duty of traveler to look and listen at crossing.

St. Louis & S. F. R. Co. *v.* Crabtree (Ark.), vol. 20, p. 923.

Effect of failure to give signals and warning at crossing.

Schweinfurth *v.* Cleveland, C., C. & St. L. Ry. Co. (Ohio), vol. 15, p. 73.

Error in instructing as to comparative weight of positive and negative evidence in regard to crossing signals.

Haun *v.* Rio Grande W. Ry. Co. (Utah), vol. 19, p. 370.

Instruction that trainmen should exercise "greater care" at crossing, too indefinite.

Louisville & N. R. Co. *v.* Clark (Ky.), vol. 12, p. 408.



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Proximate cause of injury at crossing.

Elgin, etc., Ry. Co. *v.* Duffy (Ill.), vol. 23, p. 361.

**Damages.**

Assuming facts in defining measure of damages for personal injuries.

Chicago & A. R. Co. *v.* Harrington (Ill.), vol. 23, p. 429.

Charge to jury as to use of mortality tables.

Savannah, F. & W. Ry. Co. *v.* Austin (Ga.), vol. 11, p. 539.

Damages in action for death by wrongful act.

Chesapeake & O. Ry. Co. *v.* Dixon (Ky.), vol. 14, p. 827.

Chicago & A. R. Co. *v.* Kelly (Ill.), vol. 17, p. 52.

Elements of recovery in action for personal injuries.

Beath *v.* Rapid Ry. Co. (Mich.), vol. 15, p. 793.

**Exemplary damages.**

Garrick *v.* Florida Cent. & P. R. Co. (S. Car.), vol. 13, p. 541.

Louisville & N. R. Co. *v.* Ray (Tenn.), vol. 11, p. 174.

Exemplary damages for wrongful ejection.

Lexington & E. Ry. Co. *v.* Lyons (Ky.), vol. 11, p. 212.

Inaccurate instruction as to measure of damages not prejudicial where verdict was not excessive.

Louisville Southern Ry. Co. *v.* Tucker (Ky.), vol. 12, p. 805.

Instruction as to method of determining market value of land in condemnation proceedings.

Snouffer *v.* Chicago & N. W. Ry. Co. (Iowa), vol. 11, p. 571.

**Measure of damages.**

Atlanta, K. & N. Ry. Co. *v.* Bryant (Ga.), vol. 15, p. 817.

Central of Ga. Ry. Co. *v.* Johnston (Ga.), vol. 12, p. 286.

Malott *v.* Shimer (Ind.), vol. 15, p. 774.

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Measure of damages for wrongful death.

Green *v.* Southern Pac. Co. (Cal.), vol. 13, p. 511.

Method of ascertaining damages in action for personal injuries.

Rooney *v.* New York, N. H. & H. R. Co. (Mass.), vol. 14, p. 425.

Permanent disability.

Lake Shore & M. S. Ry. Co. *v.* Conway (Ill.), vol. 11, p. 7.

Death by wrongful act, in action for death at crossing it is proper to refuse instructions requiring that deceased should have exercised all the care and caution.

Louisville & N. R. Co. *v.* Clark (Ky.), vol. 12, p. 407.

Defect cured by other instructions.

Traver *v.* Spokane St. Ry. Co. (Wash.), vol. 22, p. 759.

Defendant is estopped to complain of an instruction given for plaintiff where a similar instruction has been given at his request.

Lake Shore & M. S. Ry. Co. *v.* Conway (Ill.), vol. 11, p. 7.

Definition of gross negligence not properly given when it is not involved in case.

Louisiana Western Extension Ry. Co. *v.* Carstens (Tex. Civ. App.), vol. 12, p. 782.

Discretion of court as to.

St. Louis & S. F. R. Co. *v.* Kilpatrick (Ark.), vol. 17, p. 212.

Duty of court to instruct correctly when instructions not requested are given.

Ford *v.* Chicago, R. I. & P. Ry. Co. (Iowa), vol. 11, p. 489.

Duty to give.

Mitchell *v.* Carolina Cent. R. Co. (N. Car.), vol. 13, p. 201.

Effect of negligence, harmless error.

Anderson *v.* Union Terminal R. Co. (Mo.), vol. 20, p. 834.

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Estoppel to complain of instruction.

Illinois Cent. R. Co. *v.* Beebe (Ill.), vol. 11, p. 163.

## Evidence.

Erroneous for failing to give all the facts.

Chicago & A. R. Co. *v.* Harrington (Ill.), vol. 23, p. 429.

Erroneous instruction as to burden of proof.

Morbey *v.* Chicago & N. W. Ry. Co. (Iowa), vol. 12, p. 687.

Error in not refusing requested instructions based on hypothetical facts.

Sims *v.* Southern Ry. Co. (S. Car.), vol. 20, p. 76.

Error not rendered harmless by evidence on question not submitted to jury.

Merrill *v.* Pacific Transfer Co. (Cal.), vol. 21, p. 143.

Error to give instruction which is not justified by the evidence.

St. Louis, I. M. & St. Ry. Co. *v.* Jordan (Ark.), vol. 13, p. 681.

Giving undue prominence to particular phase of evidence.

Louisville & N. R. Co. *v.* Jones (Ala.), vol. 23, p. 224.

Ignoring material facts.

Price *v.* Chesapeake & O. R. Co. (W. Va.), vol. 14, p. 399.

Instructions contrary to evidence are reversible error.

Penny *v.* New York Cent. & H. R. R. Co. (N. Y.), vol. 12, p. 180.

Instructions misleading as to character of evidence necessary are erroneous.

Weiss *v.* Bethlehem Iron Co. (C. C. A.), vol. 12, p. 305.

Instructions not warranted by evidence.

Smith *v.* St. Louis & S. F. Ry. Co. (Mo.), vol. 14, p. 609.

May be based on evidence insufficient to support verdict.

Southern Ry. Co. *v.* Wilcox (Va.), vol. 22, p. 260.

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Not objectionable as comment upon evidence.

Traver *v.* Spokane St. Ry. Co. (Wash.), vol. 22, p. 759.

Refusal to instruct specifically as to evidence to be considered by jury.

Louisville & N. R. Co. *v.* Pittman (Ky.), vol. 23, p. 55.

Refusal to submit charge justified by evidence.

Connelly *v.* Manhattan R. Co. (N. Y.), vol. 2, p. 385.

Singling out circumstances as evidence of negligence.

Norfolk & W. Ry. Co. *v.* Cromer (Va.), vol. 23, p. 720.

Sufficiency of evidence on which to base.

Weller *v.* Chicago, M. & St. P. Ry. Co. (Mo.), vol. 22, p. 61.

Value of testimony.

Pomeroy *v.* Boston & M. R. R. (Mass.), vol. 12, p. 119.

Weight of evidence.

Chicago, etc., Ry. Co. *v.* Hoover (Ind. Ter.), vol. 23, p. 73.

Runyan *v.* Central R. Co. of New Jersey (N. J.), vol. 19, p. 290.

Where instruction requested fails to present distinctly a material fact which may control, it is properly refused.

Weiss *v.* Bethlehem Iron Co. (C. C. A.), vol. 12, p. 305.

## Exceptions to.

Florida Cent. & P. R. Co. *v.* Lucas (Ga.), vol. 16, p. 818.

Indiana, I. & I. R. Co. *v.* Bundy (Ind.), vol. 14, p. 660.

Kansas City, Ft. S. & M. R. Co. *v.* Becker (Ark.), vol. 16, p. 348.

Norfolk & W. R. Co. *v.* Marpole (Va.), vol. 16, p. 291.

Norfolk & W. Ry. Co. *v.* Reeves (Va.), vol. 16, p. 166.

Norfolk & W. Ry. Co. *v.* Stevens (Va.), vol. 16, p. 468.

Pool *v.* Southern Pac. Co. (Utah), vol. 16, p. 551.

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Failure to except.

Robbins *v.* Brockton St. Ry. Co. (Mass.), vol. 23, p. 483.

Failure to give on issue not raised by pleadings not error. Sanders *v.* Southern Ry. Co. (Ga.), vol. 14, p. 281.

## Fires.

Origin of fire.

Liverpool & L. & G. Ins. Co. *v.* Southern Pac. Co. (Cal.), vol. 15, p. 530.

Where the fact that engine causing a fire passed along defendant's road is undisputed, no error is committed in assuming such to be the case in instructing the jury.

Chicago & A. R. Co. *v.* Glenn (Ill.), vol. 12, p. 839.

Harmless error in action for killing live stock.

Southern Ry. Co. *v.* Hall (Tenn.), vol. 23, p. 276.

Instructions as to questions not raised by pleadings.

Trezona *v.* Chicago G. W. Ry. Co. (Iowa), vol. 12, p. 104.

Instruction authorizing recovery under either count of declaration.

Chicago & A. R. Co. *v.* Glenn (Ill.), vol. 12, p. 839.

Instructions not warranted by pleadings.

Fitzgibbon *v.* Chicago & N. W. Ry. Co. (Iowa), vol. 14, p. 270.

Instructions presenting leading points of but one side are erroneous.

Weiss *v.* Bethlehem Iron Co. (C. C. A.), vol. 12, p. 305.

Invasion of province of jury.

Chicago & A. R. Co. *v.* Nelson (Ill.), vol. 2, p. 385.

Irrelevant instructions.

Baltimore & O. S. W. Ry. Co. *v.* Tripp (Ill.), vol. 14, p. 119.

## Master and Servant.

Abrogation of rules.

Konold *v.* Rio Grande W. Ry. Co. (Utah), vol. 17, p. 450.

An instruction that servant using appliances with knowledge of defects, assumes risk therefrom not

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inconsistent with one that it is master's duty to see that safe and suitable appliances are furnished.

Bussey *v.* Charleston & W. C. Ry. Co. (S. Car.), vol. 11, p. 474.

Assumption of risk from defective machinery.

Youngblood *v.* South Carolina & G. R. Co. (S. Car.), vol. 20, p. 622.

Assumption of risk must not be ignored in charging jury where there is evidence tending to establish it, and error in so doing is not cured by another paragraph in regard thereto.

Quinn *v.* Chicago, R. I. & P. Ry. Co. (Iowa), vol. 12, p. 512.

As to effect of violation of rule by servant not rendered erroneous by omission of comma after word "not."

Jarvis *v.* Flint & P. M. R. Co. (Mich.), vol. 22, p. 312.

Care required in inspecting yard.

Chicago & N. W. R. Co. *v.* Delaney (Ill.), vol. 13, p. 859.

Contributory negligence of engineer.

Louisville & N. R. Co. *v.* Hiltner (Ky.), vol. 20, p. 279.

Duty of company as to ballasting tracks.

Lake Erie & W. R. Co. *v.* Morrissey (Ill.), vol. 12, p. 624.

Duty of master to furnish safe place to work.

Rush *v.* Spokane Falls & N. Ry. Co. (Wash.), vol. 20, p. 285.

Duty to protect employee from his own intemperance.

Parker *v.* Winona & St. P. R. Co. (Minn.), vol. 21, p. 594.

Erroneous charge as to lack of corroboration of testimony not cured by doubtful instruction.

Weiss *v.* Bethlehem Iron Co. (C. C. A.), vol. 12, p. 305.

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In action by an employee to recover for personal injuries, an instruction as to latent defects is reversible error where it was decided on appeal that the defects complained of were patent. *Fordyce v. Edwards* (Ark.), vol. 11, p. 521.

In action by servant to recover for personal injuries caused by obstruction on track, refusal to instruct that servant assumed the risk of such accident, not error. *Galveston, H. & H. R. Co. v. Bohan* (Tex.), vol. 12, p. 492.

In action for death of employee, risks assumed need not be specified. *Augusta Southern R. Co. v. McDade* (Ga.), vol. 12, p. 548.

Instructions in action for death of employee that recovery may be had if death resulted from defective appliance should have presented defenses of contributory negligence and waiver.

*Ford v. Chicago, R. I. & P. Ry. Co.* (Iowa), vol. 11, p. 489.

Instruction that plaintiff assumed "natural" risks of employment not misleading where correct instruction as to risks assumed has previously been given.

*Galveston, H. & H. R. Co. v. Bohan* (Tex.), vol. 12, p. 492.

Irrelevant instruction as to duty of master to instruct servant given charge of explosives.

*Rush v. Spokane Falls & N. Ry. Co.* (Wash.), vol. 20, p. 285.

Right of recovery for death of minor servant.

*Middle Georgia & A. Ry. Co. v. Barnett* (Ga.), vol. 12, p. 532.

Scope of employment.

*Morbey v. Chicago & N. W. Ry. Co.* (Iowa), vol. 12, p. 688.

Sufficiency of general instruction as to liability of master for furnishing un-

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safe appliance where no specific instruction is asked.

*Bussey v. Charleston & W. C. Ry. Co.* (S. Car.), vol. 11, p. 474.

Mere abstraction.

*Louisville R. Co. v. Park* (Ky.), vol. 2, p. 385.

Mere length of instruction will not warrant reversal.

*Weller v. Chicago, M. & St. P. Ry. Co.* (Mo.), vol. 22, p. 61.

Need not be a writing in federal court.

*Mexican Cent. Ry. Co., Limited, v. Glover* (C. C. A.), vol. 21, p. 272.

Need not set out all the evidence.

*Schmidt v. St. Louis R. Co.* (Mo.), vol. 22, p. 711.

**Negligence.**

*Bowen v. Southern Ry. Co.* (S. Car.), vol. 18, p. 331.

*Bradley v. Ohio River & C. Ry. Co.* (N. Car.), vol. 18, p. 340.

*Chicago & A. R. Co. v. Harrington* (Ill.), vol. 23, p. 429.

*Milam v. Southern Ry. Co.* (S. Car.), vol. 18, p. 253.

Erroneous charge as to negligence authorizing recovery. *Chicago & A. R. Co. v. Nelson* (Ill.), vol. 2, p. 385.

Erroneous definition of negligence.

*Western & A. R. Co. v. Vaughan* (Ga.), vol. 21, p. 512.

Failure to fully charge as to negligent conduct.

*Chicago, K. & W. R. Co. v. Bell* (Kan.), vol. 2, p. 385.

Instruction as to presumption of negligence under Georgia statute.

*Augusta Southern R. Co. v. McDade* (Ga.), vol. 12, p. 549.

Instructions confined to negligence alleged.

*Moss v. North Carolina R. Co.* (N. Car.), vol. 12, p. 19.

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- Instruction that company is liable if its servants "failed to do any thing that they were required to do" is error.  
*Louisville & N. R. Co. v. Clark* (Ky.), vol. 12, p. 407.
- It is not reversible error for the court after reciting the nature of the action, the issues, etc., to refer the jury to the petition for a fuller statement of the elements of the negligence complained of.  
*Union Pac. Ry. Co. v. Sternberger* (Kan.), vol. 12, p. 746.
- Negligence and contributory negligence.  
*Steele v. Northern Pac. Ry. Co.* (Wash.), vol. 15, p. 129.
- Negligence and contributory negligence, not warranted by evidence.  
*Norfolk & W. Ry. Co. v. Cromer* (Va.), vol. 23, p. 720.
- New trial because of conflicting instructions.  
*Edwards v. Atlantic Coast Line R. Co.* (N. Car.), vol. 23, p. 38.
- New trial because of erroneous instructions.  
*Daniels v. Florida Cent. & P. R. Co.* (S. Car.), vol. 23, p. 107.
- Not given in form requested.  
*Wheeler v. Grand Trunk Ry. Co.* (N. H.), vol. 23, p. 84.
- Objections.  
*Mickelson v. New East Tintic Ry. Co.* (Utah), vol. 20, p. 855.
- Rush v. Spokane Falls & N. Ry. Co.* (Wash.), vol. 20, p. 285.
- Peremptory instruction may be given without depriving plaintiff of constitutional right of trial by jury.  
*Morris v. Louisville & N. R. Co.* (Ky.), vol. 20, p. 368.
- Presentation of issues.  
*Blackmore v. Mo. Pac. Ry. Co.* (Mo.), vol. 21, p. 360.
- Presumption as to timeliness of giving.  
*Indiana, I. & I. R. Co. v. Bundy* (Ind.), vol. 14, p. 660.

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- Presumption that jury considered them as a whole.  
*Galesburg & G. E. R. Co. v. Milroy* (Ill.), vol. 19, p. 277.
- Province of court.  
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- Liverpool & L. & G. Ins. Co. v. Southern Pac. Co.* (Cal.), vol. 15, p. 530.
- Province of court to modify.  
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- Proximate cause.  
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- Louisville & N. R. Co. v. Brown* (Ala.), vol. 14, p. 794.
- Robertson v. Wabash R. Co.* (Mo.), vol. 16, p. 16.
- Railroads in streets, failure to instruct as to care to be exercised by railroad company in street.  
*McIlhane v. Southern R. Co.* (N. Car.), vol. 11, p. 100.
- Reciting or referring to pleadings in.  
*Graybill v. Chicago, M. & St. P. Ry. Co.* (Iowa), vol. 20, p. 178.
- Repetition.  
*Chicago, R. I. & P. Ry. Co. v. Sturey* (Neb.), vol. 13, p. 849.
- Nashville St. R. R. v. O'Bryan* (Tenn.), vol. 22, p. 902.
- Requested instructions covered by instructions given.  
*Illinois Cent. R. Co. v. Kuhn* (Tenn.), vol. 22, p. 324.
- Jarvis v. Flint & P. M. R. Co.* (Mich.), vol. 22, p. 312.
- Kansas City, etc., Ry. Co. v. McElroy* (Mo.), vol. 22, p. 398.
- Review of.  
*Central of Georgia Ry. Co. v. Bond* (Ga.), vol. 17, p. 757.
- McGraw v. Chicago, R. I. & P. Ry. Co.* (Neb.), vol. 18, p. 764.
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Special instruction as to question covered by general instruction.

Baltimore & O. R. Co. v. Hellenthal (C. C. A.), vol. 13, p. 774.

Special verdict.

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Stock, speed in excess of ordinance as affecting liability. Southern Ry. Co. v. Wood (Ky.), vol. 15, p. 570.

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Sufficiency of assignment of error as to instructions.

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Effect of inability to procure insurance where statute makes company an insurer. Dean v. Charleston & W. C. Ry. Co. (S. Car.), vol. 15, p. 555.

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Party not entitled to answers to interrogatories as to what particular possible witnesses would testify.

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Scope of interrogatory as to whether the act of plaintiff in placing himself on foot-board of the engine contributed to his injury.

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 cense tax where railroad is  
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Constitutionality of statute  
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Issuance of thousand-mile tickets.

Smith *v.* Lake Shore & M. S. Ry. Co. (Mich.), vol. 8, p. 496.

It is a reasonable exercise of the police power of a state and no unconstitutional interference with interstate commerce or with the transportation of the mails of the United States, or the taking of the property of a railway company without due process of law, for a state to require by statute that every regular passenger train running wholly within limits of the state, shall stop at all stations at county seats directly in its course for a sufficient length of time to take on and discharge passengers with safety.

Gladson *v.* State of Minnesota (U. S.), vol. 7, p. 558.

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License tax on railroad.

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No recovery can be had for breach of illegal contract for interstate shipment.

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- Validity of joint rate based on mistake of connecting carrier in quoting its rate.  
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- Reviewing acts of commission.  
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- State statute providing for liability of initial carrier for negligence of connecting carrier.  
*McCann v. Eddy* (Mo.), vol. 2, p. 633.
- State statute providing for stoppage of trains unconstitutional.  
*Illinois Central R. Co. v. State of Illinois, Butler* (U. S.), vol. 4, p. 352.

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- State statute providing for stopping trains at county seats invalid, mandamus to compel.  
*Cleveland, C., C. & St. L. Ry. Co. v. People, Jett* (Ill.), vol. 14, p. 846.
- State statute requiring license for elevator in which grain is stored for interstate shipment is not, therefore, a regulation of interstate commerce.  
*Cargill Co. v. Minnesota* (U. S.), vol. 20, p. 658.
- State statute requiring the heating of passenger cars, validity.  
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- State statute requiring train carrying interstate mails to make an unnecessary deviation, validity.  
*Illinois Central R. Co. v. State of Illinois, Butler* (U. S.), vol. 4, p. 354.
- Statute requiring passenger trains to stop at county seats a burden upon interstate commerce.  
*Cleveland, C., C. & St. L. Ry. Co. v. People of State of Illinois, Jett* (U. S.), vol. 17, p. 227.
- Trans-Missouri Freight Association.  
 The granting of an injunction against such an association does not give the "Trust Act" a retroactive effect, for, even though such association, which was entered into prior to the passage of the act, may have been legal at the time of its formation, its continuation, after it has been declared to be illegal, is a violation of the act.  
*United States v. Trans-Missouri Freight Association* (U. S.), vol. 7, p. 388.
- The memorandum of agreement between railway companies forming a freight association recited that it was entered into "for the purpose of mutual protection by establishing and

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*Continued.* *Continued.*

maintaining reasonable rates, rules and regulations for freight traffic, both through and local." To that end the association was formed and a body created which was to adopt rates, which, when agreed to, were to be the governing rates for all the companies, and a violation of which subjected the defaulting company to the payment of a penalty. The parties to such associations had the right to withdraw from the agreement on giving thirty days' notice: *held*, that the direct and necessary effect of such agreement, while in operation, was to put a restraint upon trade or commerce, within the prohibition of the "Trust Act."

United States *v.* Trans-Missouri Freight Association (U. S.), vol. 7, p. 388.

The prohibitions of the act extend to all combinations in restraint of trade or commerce, whether in the form of trusts or in any other form, whatever, and the language of the title of the act, which is "to protect trade and commerce against unlawful restraints and monopolies which were unlawful at common law," but includes those made unlawful in the body of the statute, and also all contracts in restraint of trade, whether such restraint is reasonable or unreasonable. United States *v.* Trans-Missouri Freight Association (U. S.), vol. 7, p. 388.

The proper medium of interpretation of the meaning of the language of an act of congress is not the debates in that body at the time of the passage of the act, but the language of the act and the history of the times when it passed.

United States *v.* Trans-Missouri Freight Association (U. S.), vol. 7, p. 388.

The public policy of the gov-

ernment is to be found in its statutes, and, when they have not directly spoken, then in the decisions of the courts and the constant practice of the government officials; but when the law making power speaks upon a particular subject, over which it has constitutional power to legislate, public policy, in such a case, is what the statute enacts.

United States *v.* Trans-Missouri Freight Association (U. S.), vol. 7, p. 388.

There is nothing in the language of the "Trust Act," in contemporaneous history, in the legal situation at the time of its passage, in its legislative history, or in any general difference in the nature or kind of trading or manufacturing companies from railroad companies to warrant the conclusion that the legislature, in prohibiting the making of contracts in restraint of trade, did not intend to include railroads within the purview of the act.

United States *v.* Trans-Missouri Freight Association (U. S.), vol. 7, p. 388.

The United States are invested by the fourth section of the "Trust Act" with full power and authority to bring an action to dissolve a freight association, which is in restraint of trade commerce, although they have no pecuniary interest in the result of the litigation, or in the question to be decided by the county.

United States *v.* Trans-Missouri Freight Association (U. S.), vol. 7, p. 388.

Undue preference a question of fact.

Texas Pac. Ry. Co. *v.* Interstate Commerce Commission (U. S.), vol. 5, p. 87.

Violation of interstate commerce law as a defence must be pleaded.

Missouri, K. & T. Ry. Co. *v.* Bagley (Kan.), vol. 13, p. 259.

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Visitorial power of state as to interstate business.

State *v.* United States Exp. Co. (Minn.), vol. 19, p. 41.

Welfare of locality to be considered by commission.

Tex. Pac. Ry. Co. *v.* Interstate Commerce Commission (U. S.), vol. 5, p. 87.

What constitutes.

Louisville & N. R. Co. *v.* Vancleave (Ky.), vol. 21, p. 477.

When railroad situated wholly within state is subject to interstate commerce act.

Cincinnati, N. O. & T. P. R. Co. *v.* Interstate Commerce Commission (U. S.), vol. 4, p. 223.

"Wilson Act," construction. State *v.* Intoxicating Liquors (Me.), vol. 20, p. 511.

**INTERVENING CAUSES.***See Fires.***INTERVENTION.***See Mortgages. Parties.***INTOXICATING LIQUORS.***See Carriers of Goods.*

Constitutionality of Maine statute prohibiting the bringing of intoxicating liquors into state.

State *v.* Intoxicating Liquors (Me.), vol. 20, p. 511.

**INTOXICATION.**

*See Carriers of Passengers. Contributory Negligence. Drunkenness. Evidence. Trespassers.*

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Duty of railroad company to avail itself of new inventions.

Richmond R., etc., Co. *v.* Garthright (Va.), vol. 4, p. 264.

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What is within meaning of contract of shipment.

Pierce *v.* Southern Pac. Co. (Cal.), vol. 7, p. 564.

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Action by one company against another to recover damages paid by the former, and alleged to have been caused by negligence of the latter. Sufficiency of petition alleging passenger's right to recover.

Cincinnati, New Orleans, etc., R. Co. *v.* Louisville & Nashville R. Co. (Ky.), vol. 2, p. 409.

**JOINT RATES.***See Interstate Commerce.***JOINT TORT FEASORS.***See Carriers of Passengers.*

Injury to passenger through negligence of two companies.

West Chicago St. R. Co. *v.* Piper (Ill.), vol. 9, p. 147.

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West Chicago St. R. Co. *v.* Piper (Ill.), vol. 9, p. 147.

**JOINT USE OF TRACKS.**

Union Pac. Ry. Co. *v.* Chicago, etc., Ry. Co. (U. S.), vol. 6, p. 1.

**JOLTING.***See Carriers of Passengers.***JUDGES.**

Disqualification because of relation to stockholders.

Robinson *v.* Southern Pacific Co. (Cal.), vol. 2, p. 44.

Trial judge not disqualified merely because his son is prosecuting suit for a percentage.

Allison *v.* Southern Ry. Co. (N. Car.), vol. 23, p. 714.

## JUDGMENTS.

*See Eminent Domain.  
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Conclusiveness of former judgment against railroad and another party, in action by former against latter.

*Boston & M. R. R. v. Sargent* (N. H.), vol. 21, p. 335.

Effect of agreement by counsel on judgment sustaining demurrer to both declaration and bill of particulars where judgment includes both.

*King v. Norfolk & W. Ry. Co.* (Va.), vol. 23, p. 701.

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*McTavish v. Great Northern Ry. Co.* (N. Dak.), vol. 14, p. 59.

Failure to serve process as defense in action to enforce domestic judgment.

*Maysville & B. S. R. Co. v. Ball* (Ky.), vol. 20, p. 186.

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*McTavish v. Great Northern Ry. Co.* (N. Dak.), vol. 14, p. 59.

Joint judgments against two railroads in action for personal injuries.

*Little Rock, etc., R. Co. v. Stevenson* (Ark.), vol. 5, p. 704.

Judgment in statutory action for personal injuries conclusive in subsequent common-law action between same parties for same injuries.

*Clare v. N. Y. & N. E. R. Co.* (Mass.), vol. 13, p. 569.

Receivers, payments.

*Dillon v. Oregon, etc., Ry. Co.* (Ore.), vol. 5, p. 713.

Sufficiency of proceedings to enforce statutory duty to make connections with other roads.

*Southern Ry. Co. v. Commonwealth* (Va.), vol. 20, p. 360.

What constitutes judgment sustaining or overruling demurrer, upon which error can be based.

*Tallassee Falls Mfg. Co. v. Western Ry. of Alabama* (Ala.), vol. 20, p. 455.

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*Richmond Union Pass. Ry. Co. v. Richmond, F. & P. R. Co.* (Va.), vol. 15, p. 206.

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Carriers of live stock, law of foreign state.

*Meuer v. Chicago, etc., Ry. Co.* (S. Dak.), vol. 2, p. 493.

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*McDonald v. Illinois Cent. R. Co.* (Ill.), vol. 20, p. 309.

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*McKibbin v. Great Northern Ry. Co.* (Minn.), vol. 16, p. 155.

Eminent domain, deposit of amount of award of commissioner.

*Foster v. Chicago, R. I. & T. Ry. Co.* (Tex.), vol. 3, p. 2.

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*St. Louis, I. M. & S. Ry. Co. v. Brown* (Ark.), vol. 16, p. 440.

Laws of sister state.

*Crandall v. Great Northern Ry. Co.* (Minn.), vol. 21, p. 388.

*Ex parte Northeastern R. Co.* (S. Car.), vol. 21, p. 99.

*In re Mayo's Estate* (S. Car.), vol. 21, p. 99.

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*Atchison, T. & S. F. Ry. Co. v. Ryan* (Kan.), vol. 21, p. 684.

Opening of railroad.

*Knowlton v. New York, N. H. & H. R. Co.* (Conn.), vol. 16, p. 573.

Statute incorporating city.

*Jackson v. Kansas City, etc., R. Co.* (Mo.), vol. 19, p. 99.

That unblocked frog could have been seen by deceased brakeman.

*Jones v. Flint & P. M. R. Co.* (Mich.), vol. 21, p. 904.

## JUDICIAL SALES.

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## JURISDICTION.

*See Carriers of Goods.*

*Conflict of Laws.*

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*MacCarthy v. Whitcomb* (Wis.), vol. 20, p. 860.

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- Action to recover excess of freight charges.  
*Conn v. Louisville & N. R. Co.* (Ky.), vol. 15, p. 838.
- Administrator may sue in circuit court of county where deceased resided, in action for wrongful death, although the accident occurred in another county.  
*Louisville & N. R. Co. v. Cooley* (Ky.), vol. 12, p. 553.
- Certificate of state court as showing that federal question as to whether repeal of exemption from taxation impaired obligation of contract was passed upon.  
*Gulf & Ship Island R. Co. v. Hewes* (U. S.), vol. 23, p. 510.
- Citizenship requisite to give federal jurisdiction.  
*Louisville, N. A. & C. Ry. Co. v. Louisville Trust Co.* (U. S.), vol. 15, p. 345.
- Company liable for death of intestate cannot contest jurisdiction of probate court.  
*Ex parte Northeastern R. Co.* (S. Car.), vol. 21, p. 99.
- In re Mayo's Estate (S. Car.), vol. 21, p. 99.
- Court's jurisdiction over railroad commissions.  
*Louisville & N. R. Co. v. Commonwealth* (Ky.), vol. 13, p. 125.
- Court's jurisdiction to direct location of union station.  
*Concord & M. R. R. v. Boston & M. R. R.* (N. H.), vol. 14, p. 458.
- Death caused by acts committed without the state.  
*Rudiger v. Chicago, etc., R. Co.* (Wis.), vol. 6, p. 50.
- Equity has no jurisdiction of combinations between carriers of freight.  
*Post v. Southern Ry. Co.* (Tenn.), vol. 16, p. 201.
- Equity jurisdiction of bill to obtain cancellation of guaranty of bonds.  
*Louisville, N. A. & C. Ry. Co. v. Louisville Trust Co.* (U. S.), vol. 15, p. 345.
- Evidence of jurisdiction of foreign court.  
*Robertson v. Stead* (Mo.), vol. 4, p. 529.
- Exaggeration of damages, province of court.  
*Mexican Cent. Ry. Co., Limited, v. Glover* (C. C. A.), vol. 21, p. 272.

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- Federal court decreeing receivership of a railroad, has jurisdiction to prevent the establishing in a state court of a claim for negligence after foreclosure sale and pending delivery to purchaser.  
*Fidelity Insurance, Trust & Safe-Deposit Co. v. Norfolk & W. R. Co.* (C. C. Va.), vol. 12, p. 874.
- Federal jurisdiction of appointment of receiver.  
*International Trust Co. v. T. B. Townsend Brick & Contracting Co.* (C. C. A.), vol. 15, p. 310.
- Federal jurisdiction where corporation of one state is subsequently created a corporation of another.  
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- Federal jurisdiction where state seeks to impose federal tax not dependent on diversity of citizenship.  
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- Jurisdiction of appellate division of New York court.  
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- Jurisdiction of court of claims where claims for value of railroad property seized by government during war are to be determined.  
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- Defective summons effective to cause running to start afresh.
- Ketterman v. Dry Fork R. Co.* (W. Va.), vol. 19, p. 446.
- Effect of statute passed after commencement of suit.
- Nichols v. Norfolk, etc., R. Co.* (N. Car.), vol. 8, p. 768.
- Injuries to passengers.
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- Kentucky St., § 819, applies to action for charging more for short than long haul.
- Louisville & N. R. Co. v. Walker* (Ky.), vol. 21, p. 473.
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- of bringing of action has elapsed.
- Missouri Pac. Ry. Co. v. Moffatt* (Kan.), vol. 12, p. 397.
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- Burden of proving that ordinance was legally passed.

- Kansas City, etc., Ry. Co. v. Board Waterworks* (Ark.), vol. 20, p. 265.

- Company's grain elevators leased to and operated by tenants, if used exclusively in storing and taking in grain for shipments over its road, are exempt as railroad's real estate used exclusively in operation of the road.

- Hertert, Treasurer, v. Chicago, M. & St. P. Ry. Co.* (Iowa), vol. 21, p. 672.



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 201.

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 417.

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- Mandamus to compel carrier to perform public duties.  
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- Mandamus will lie at the instance of an abutting owner to compel a street railway to operate its line.  
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- Parties in mandamus proceedings to compel lessee of railroad to remove obstruction in street.  
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- To railroad to compel removal of obstruction, sufficiency of affidavit under N. Y. statute.  
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- Trial of application for mandamus to compel operation of street railway line is that of an action at law.  
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- Recovery of damages by.  
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*Baggage.*  
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Appliances that are ordinarily or generally used are all that a master is required to furnish.

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*Shadford v. Ann Arbor St. Ry. Co. (Mich.), vol. 6, p. 584.*

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*Benson v. N. Y., N. H. & H. R. Co. (R. I.), vol. 22, p. 299.*

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Direction of verdict for defendant where evidence that unblocked frogs are not unsafe.

*Kilpatrick v. Choctaw, etc., R. Co. (Ind. Ter.), vol. 23, p. 244.*

Duty of company to use self-couplers.

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**MASTER AND SERVANT—** **MASTER AND SERVANT—**  
*Continued.* *Continued.*

Failure to furnish automatic car-couplers is negligence per se.

*Troxler v. Southern Ry. Co.* (N. Car.), vol. 14, p. 711.

Fences, where a statute requires railway companies to erect fences on their rights of way through all enclosed lands or lots, it does not render such companies liable for injuries done to employees consequent upon failure to fence, but only for damages done to stock.

*Carper v. Receivers of Norfolk & W. R. Co.* (C. C. A.), vol. 7, p. 95.

Hand-bar not machinery within meaning of employers' liability act.

*Clements v. Ala. Great Southern R. Co.* (Ala.), vol. 19, p. 266.

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*Crandall v. Great Northern Ry. Co.* (Minn.), vol. 21, p. 388.

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*Clements v. Alabama Great Southern R. Co.* (Ala.), vol. 19, p. 266.

Master liable for neglect of agent as to appliances.

*New York, N. H. & H. R. Co. v. O'Leary* (C. C. A.), vol. 14, p. 718.

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Master not liable for injuries received by servant through defects in appliances substituted by fellow servant in place of safe and suitable appliance furnished by master.

*Campbell v. New Jersey Dry Dock & Transp. Co.* (N. J.), vol. 11, p. 12.

Negligence in furnishing appliances not chargeable to fellow servant.

*Troxler v. Southern Ry. Co.* (N. Car.), vol. 14, p. 711.

Negligence of employee entrusted with superintendence in using improper appliances.

*Louisville & N. R. Co. v. Jones* (Ala.), vol. 23, p. 224.

Proper appliances, tests of what are in action for injury to employee.

*Louisville & N. R. Co. v. Jones* (Ala.), vol. 23, p. 224.

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*Gulf, C. & S. F. R. Co. v. Kelly* (Tex. Civ. App.), vol. 3, p. 439.

Use by several companies not sufficient test of what are proper appliances.

*Louisville & N. R. Co. v. Jones* (Ala.), vol. 23, p. 224.

Whether master is negligent in using equipment in general use is question for jury.

*Indiana, I. & I. R. Co. v. Bundy* (Ind.), vol. 14, p. 660.

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*Alabama G. S. R. Co. v. Carroll* (C. C. A.), vol. 9, p. 759.

*Cleveland, etc., Ry. Co. v. Kernochan* (Ohio), vol. 7, p. 774.

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*Huffman v. Mich. Cent. R. Co.* (Mich.), vol. 5, p. 542.

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- Narramore v. Cleveland, C., C. & St. L. Ry. Co. (C. C. A.), vol. 17, p. 502.
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- Assumption by servant of risk from defective appliances, questions for jury.
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- Assumption of risk must be pleaded and proven.
- Walker v. McNeill (Wash.), vol. 11, p. 738.
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- Young v. W. Va., C. & P. Ry. Co. (W. Va.), vol. 4, p. 134.
- Brakeman continuing to work with knowledge of defective rails.
- Arnold v. Louisville & N. R. Co. (Ky.), vol. 19, p. 272.
- Brakeman does not, as matter of law, assume risk from defects on coupling mechanism of cars by merely attempting to couple them with knowledge of defect.
- Youngblood v. S. Car. & G. R. Co. (S. Car.), vol. 20, p. 622.
- Brakeman injured by hook on rear of tender the presence of which he was chargeable with notice.
- Crawford v. Detroit, etc., R. Co. (Mich.), vol. 22, p. 42.
- Brakeman knowing that culverts are uncovered assumes risk of injury therefrom.
- West v. Southern Pac. Co. (C. C. A.), vol. 11, p. 447.
- Brakeman not chargeable with notice that track is unsafe.
- Ill. Cent. R. Co. v. Sanders (Ill.), vol. 11, p. 861.

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*Donahue v. Boston & M. R. R. (Mass.), vol. 20, p. 526.*

Brakeman raising his head while passing under a low bridge of which he knew is guilty of contributory negligence.

*Haffner v. Chesapeake & O. Ry. Co. (Va.), vol. 12, p. 556.*

Brakeman who fails to use ordinary care in coupling cars cannot recover for injuries.

*Southern Ry. Co. v. Arnold (Ala.), vol. 11, p. 864.*

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*Chattanooga S. R. Co. v. Myers (Ga.), vol. 19, p. 776.*

*Haltom v. Southern Ry. Co. (N. Car.), vol. 19, p. 776.*

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*Baltimore & O. R. Co. v. Burris (C. C. A.), vol. 23, p. 912.*

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*Dyer v. Fitchburg R. Co. (Mass.), vol. 11, p. 473.*

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*Norfolk & W. Ry. Co. v. Cromer (Va.), vol. 23, p. 720.*

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*Wabash R. Co. v. Skiles (Ohio), vol. 21, p. 882.*

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*Jackson & S. St. R. R. v. Simmons (Tenn.), vol. 23, p. 236.*

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*Baltimore, etc., Ry. Co. v. Peterson (Ind.), vol. 20, p. 887.*

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*Bradley v. Chicago, M. & St. P. Ry. Co. (Mo.), vol. 8, p. 728.*

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*Alabama G. S. R. Co. v. Roach (Ala.), vol. 11, p. 869.*

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*International & G. N. R. Co. v. Lee (Tex. Civ. App.), vol. 3, p. 441.*

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*Moore v. Kansas City, Ft. S. & M. Ry. Co. (Mo.), vol. 12, p. 580.*

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*Morris v. Duluth, etc., Ry. Co. (C. C. A.), vol. 22, p. 45.*

*Quirouet v. Alabama G. S. R. Co. (Ga.), vol. 18, p. 551.*

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Company's neglect to perform statutory duty as to maintenance of ladders on side of car did not relieve injured employee from proving that his own negligence did not contribute to his injuries.

Kilpatrick v. Grand Trunk Ry. Co. (Vt.), vol. 20, p. 300.

Contributory negligence as defense to action under employers' liability act.

Southern Ry. Co. v. Harbin (Ga.), vol. 18, p. 692.

Contributory negligence in coupling cars.

Brown v. Louisville, H. & St. L. Ry. Co. (Ky.), vol. 23, p. 883.

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Quirouet v. Alabama G. S. R. Co. (Ga.), vol. 18, p. 551.

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Quirouet v. Alabama G. S. R. Co. (Ga.), vol. 18, p. 551.

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Employee injured on track.

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Employee killed by a train which he could have seen for a mile before it reached him.

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- Employee voluntarily placing himself in dangerous position.  
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- Employee walking in unlighted round house killed by falling in pit of which he knew.  
McDonnell *v.* Illinois Cent. Ry. Co. (Iowa), vol. 11, p. 534.
- Employee working in yard failing to inform fellow employees when about to enter or climb upon standing car.  
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- Engineer using defective drain pipe on tender as handhold, question for jury.  
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- Engineer violating rule prescribing the distance train in front shall be followed.  
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- Failure of servant to discover defect not patent is not contributory negligence.  
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- Fireman's going under engine without notifying engineer, contrary to established custom, is proximate cause of his injuries.  
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Youngblood *v.* South Carolina & G. R. Co. (S. Car.), vol. 20, p. 622.

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- ing train by electric light pole too near track in yard with which he was familiar. *Blackstone v. Central of Georgia Ry. Co. (Ga.)*, vol. 20, p. 365.
- Obedience to order requiring performance of hazardous act. *Allison v. Southern Ry. Co. (N. Car.)*, vol. 23, p. 714.
- Obstructions, section man remaining on track for purpose of removing obstruction endangering an approaching train. *Blomquist v. Great Northern Ry. Co. (Minn.)*, vol. 4, p. 439.
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- Of conductor in failing to observe rules concurring with company's negligence in allowing derrick to swing over track. *McCreery v. Ohio River R. Co. (W. Va.)*, vol. 20, p. 875.
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- Oiling engine by hand when automatic oiler is broken not contributory negligence. *Stockwell v. Chicago & N. W. Ry. Co. (Iowa)*, vol. 12, p. 576.
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Servant injured by cattle guard as to proximity of which to track he was not chargeable with notice was not guilty of contributory negligence.

*Wood v. Louisville & N. R. Co.* (Tenn.), vol. 11, p. 525.

Servants may do work in customary manner and yet do it in such manner as to contribute to his injury.

*Bodie v. Charleston, etc., Ry. Co.* (S. Car.), vol. 22, p. 818.

Servant not guilty of contributory negligence in assuming dangerous position in obedience to orders when his duty could not be otherwise performed.

*Louisville So. R. Co. v. Tucker* (Ky.), vol. 12, p. 805.

Servant obeying order of vice principal and going into post of obvious danger, relying on promise by vice principal of protection, not guilty of contributory negligence, as matter of law unless danger was so great that a person of ordinary prudence would have refused to obey.

*Louisiana Western Extension Ry. Co. v. Carstens* (Tex. Civ. App.), vol. 12, p. 781.

Servant using defective appliances with knowledge of defect is not guilty of contributory negligence unless he knew such defect rendered it dangerous.

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*Freeman v. Ill. Cent. R. Co. (Tenn.)*, vol. 22, p. 49.

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*Trott v. Chicago, R. I. & P. Ry. Co. (Iowa)*, vol. 21, p. 391.

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*Trott v. Chicago, R. I. & P. Ry. Co. (Iowa)*, vol. 21, p. 391.

Sufficiency of notice that digging is being done between ties which does not warn brakeman that frog is unblocked.

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Violation of rule requiring employee to be on top of cars is not, where he was injured while in a safer place.

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Servant injured by reason of defect in appliance cannot recover if by exercising reasonable care he could have discovered such defect before using the appliance.  
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- Harmless error in admitting evidence of statement of injured employee to conductor which should have been made to superintendent.  
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- Harmless error in admitting expert testimony to show what constitutes safe condition of tracks, in action for injury to brakeman caused by gravel pile in railroad yard.  
*Hurst v. Kansas City, P. & G. R. Co. (Mo.), vol. 21, p. 899.*
- Harmless error in rejecting declarations of engineer tending to show that deceased brakeman was not upon top of car in discharge of duty.  
*Louisville & N. R. Co. v. Tucker (Ky.), vol. 23, p. 876.*
- Hearsay evidence tending to enhance damages.  
*Trott v. Chicago, R. I. & P. Ry. Co. (Iowa), vol. 21, p. 391.*
- Instruction as to duty of furnishing safe cars properly refused as having no limitation as to place where like cars were used.  
*Benson v. New York, N. H. & H. R. Co. (R. I.), vol. 22, p. 299.*
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*Wimber v. Iowa Cent. Ry. Co.* (Iowa), vol. 23, p. 476.

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*Trott v. Chicago, R. I. & P. Ry. Co.* (Iowa), vol. 21, p. 391.

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*Hicks v. Southern Ry. Co.* (S. Car.), vol. 21, p. 217.

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*Lipscomb v. Houston, etc., Ry. Co.* (Tex.), vol. 23, p. 401.

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*Indianapolis Union Ry. Co. v. Houlihan* (Ind.), vol. 21, p. 916.

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*Wimber v. Iowa Cent. Ry. Co.* (Iowa), vol. 23, p. 476.

Secondary evidence, entries in car inspector's books as to condition of car inflicting injury.

*Hicks v. Southern Ry. Co.* (S. Car.), vol. 21, p. 217.

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*Illinois Cent. R. Co. v. Stewart* (Ky.), vol. 21, p. 874.

That cars causing injury were in common use.

*Benson v. N. Y., N. H. & H. Ry. Co.* (R. I.), vol. 22, p. 299.

Where the evidence as to the manner in which an accident occurred is purely circumstantial, the case is for the jury.

*Hughes v. Louisville & N. R. Co.* (Ky.), vol. 12, p. 560.

Whether injured brakeman had never been discharged.

*Wimber v. Iowa Cent. Ry. Co.* (Iowa), vol. 23, p. 476.

Excess of speed in city limits, injuring servant.

*Pittsburg, C., C. & St. L. Ry. Co. v. Moore* (Ind.), vol. 14, p. 678.

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*Illinois Cent. R. Co. v. Hilliard* (Ky.), vol. 5, p. 539.

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*Rush v. Spokane Falls & N. Ry. Co.* (Wash.), vol. 20, p. 285.

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*Broslin v. Kansas City, M. & B. R. Co.* (Ala.), vol. 9, p. 99.

Failure of superintendent, who has been notified that forest fire is raging on road, to notify trainmen, is negligence.

*Bateman v. Peninsular Ry. Co.* (Wash.), vol. 12, p. 679.



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## Foreign Cars.

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Company against whom its employee had recovered could not recover over against connecting carriers where both were guilty of negligence in failing to inspect defective car.

Galveston, H. & S. A. Ry. Co. *v.* Nass (Tex.), vol. 20, p. 306.

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*Nichols v. Oregon Short Line R. Co.* (Utah), vol. 23, p. 654.
- Proximate cause of injury to employees of other company.  
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- Frogs, judicial notice that unblocked frogs could have been seen by deceased brakeman.  
*Jones v. Flint & P. M. R. Co.* (Mich.), vol. 21, p. 904.
- General reputation of employee for incompetency, not sufficient to charge fellow servant with knowledge.  
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- Hypothetical questions as to proper position on engine pushing cars.  
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- In action against a railway company to recover for injury caused to an employee by alleged negligence in planking a crossing, evidence of the condition upon which company received its street rights is admissible.  
*Valley Ry. Co. v. Keegan* (C. C. A.), vol. 11, p. 507.
- In action to recover for personal injuries caused by alleged defective engine, burden is on plaintiff to show that it was unsuitable and that the defects caused his injuries.  
*Texas & P. Ry. Co. v. Barrett* (U. S.), vol. 11, p. 867.
- Incompetency of fellow servant.  
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- Injuries caused by unauthorized use of hand car by servant does not render master liable.  
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- Injuries to employee walking near track after finishing his day's work, from a stick of wood being negligently thrown from a passing train, by a co-employee.  
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- Injury incurred while violating orders of master.  
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- Injury to employee by backing train against cars which he was chaining.  
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Missouri, K. & T. Ry. Co. v. Roberts (Tex. App.), vol. 11, p. 21.

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Inspection, failure of company to discover defect in valve, whereby plaintiff was obliged to expose himself to injurious heat in remedying the consequences of such defect, was not the proximate cause of injuries resulting from the exposure.

Stockwell v. Chicago & N. W. Ry. Co. (Iowa), vol. 12, p. 576.

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Intemperate habits of servant does not warrant recovery for death of another servant if such habit was in no way connected with the cause of the death.

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- Liability for death of employee caused by collision of hand cars.  
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Master liable for injury to servant where negligence of vice principal was proximate cause, although negligence of fellow servant was also contributory.

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Negligence under Mich. Comp. Laws, sec. 6313, requiring the blocking of frogs, question for jury.

Jones *v.* Flint & P. M. R. Co. (Mich.), vol. 21, p. 904.

Negligence where employee is injured on track.

Fisher *v.* Louisville, etc., Ry. Co. (Ind.), vol. 6, p. 785.

Negligent blasting, question for jury.

Louisville & N. R. Co. *v.* Tow (Ky.), vol. 21, p. 442.

Nonassignable duties.

Pool *v.* Southern Pac. Co. (Utah), vol. 16, p. 551.

No presumption of in case of accident to employee.

Patton *v.* Texas & Pac. Ry. Co. (U. S.), vol. 20, p. 48.

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Chesapeake & Ohio Ry. Co. *v.* Dixon (U. S.), vol. 21, p. 79.

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Meyers *v.* Ill. Cent. R. Co. (La. Ann.), vol. 6, p. 786.

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Hauss *v.* Lake Erie & W. R. Co. (C. C. A.), vol. 22, p. 864.

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Comer *v.* Hill (Ga.), vol. 11, p. 3.

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Whipple *v.* New York, etc., R. Co. (R. I.), vol. 5, p. 517.

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Wood *v.* Louisville & N. R. Co. (Tenn.), vol. 11, p. 525.

Plaintiff cannot recover in an action for damages for the negligent killing of his intestate where it appears from the evidence that the death may have resulted from one of several possible causes, some of which were irreconcilable with the possibility of negligence on the part of the defendant.

Kenneson *v.* West End St. Ry. Co. (Mass.), vol. 9, p. 445.

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Mexican Cent. Ry. Co., Limited, *v.* Glover (C. C. A.), vol. 21, p. 272.

Pleading and proof in action based on failure to have sufficient yard fence.

Young *v.* Syracuse, B. & N. Y. R. Co. (N. Y.), vol. 21, p. 11.

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# **MASTER AND SERVANT—** *Continued.*

## **Presumptions.**

An accident to an employee raises no presumption of negligence on the part of the employer.

*Ketterman v. Dry Fork R. Co.* (W. Va.), vol. 19, p. 445.

*Lincoln St. Ry. Co. v. Cox* (Neb.), vol. 4, p. 273.

*Patton v. Texas & Pac. Ry. Co.* (U. S.), vol. 20, p. 48.

As to foreign laws relating to master's liability for injury to employee.

*Mexican Cent. Ry. Co., Limited, v. Glover* (C. C. A.), vol. 21, p. 272.

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*Atchison, T. & S. F. R. Co. v. Tindall* (Kan.), vol. 6, p. 557.

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*Hodges v. Kimball* (C. C. A.), vol. 19, p. 755.

Presumption as to existence of employers' liability act in another state.

*MacCarthy v. Whitcomb* (Wis.), vol. 20, p. 860.

Presumption of negligence when collision or derailment causes injury to employee.

*Wright v. Southern Ry. Co.* (N. Car.), vol. 20, p. 157.

Presumption of negligence where plaintiff has not shown himself free from fault.

*Florida Cent. & P. R. Co. v. Burney* (Ga.), vol. 6, p. 543.

Rebutting presumption of negligence arising from injury to servant from defect in car.

*Fulton v. Bullard* (C. C. A.), vol. 14, p. 547.

Proximate cause of death of employee where message from train dispatcher was misunderstood, question for jury.

*Southern Pac. Co. v. Yeargin* (C. C. A.), vol. 22, p. 459.

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*Wright v. Southern Pac. Co.* (Utah), vol. 5, p. 560.

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*Hunter v. Kansas City & M. Ry. & Bridge Co.* (C. C. A.), vol. 10, p. 620.

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*Jones v. Flint & P. M. R. Co.* (Mich.), vol. 21, p. 904.

Question for jury, liability for injury to inexperienced servant from coupling cars.

*Louisville & N. R. Co. v. Miller* (C. C. A.), vol. 19, p. 501.

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*Hooper v. Great Northern Ry. Co.* (Minn.), vol. 19, p. 1.

Question of master's negligence in using an arrangement of wires in general use is for jury.

*Indiana, I. & I. R. Co. v. Bundy* (Ind.), vol. 14, p. 660.

Question of safe place to work, for jury.

*Doing v. New York, O. & W. Ry. Co.* (N. Y.), vol. 9, p. 69.

Question of whether action was called for from railroad in emergency to secure the safe running of trains was for jury.

*Sprague v. N. Y. & N. E. R. Co.* (Conn.), vol. 6, p. 638.

Railroad company permitting an electric car company to place wires over its track in such a manner as to injure its servants is guilty of negligence.

*Erslew v. New Orleans & N. E. R. Co.* (La.), vol. 6, p. 436.

Railroad using track of another company constitutes the servants of the latter its agents.

*Murray v. Lehigh Valley R. Co.* (Conn.), vol. 4, p. 210.



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Execution of release of claim for damages and acceptance of benefits does not estop injured employee from maintaining action.

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## **Mutuality.**

Petty *v.* Brunswick & W. Ry. Co. (Ga.), vol. 16, p. 840.

Of claim for damages for personal injuries in consideration of future employment, certainty and mutuality in agreement.

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Petty *v.* Brunswick & W. Ry. Co. (Ga.), vol. 16, p. 840.

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Johnson *v.* Charleston & S. Ry. Co. (S. Car.), vol. 12, p. 762.

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## **Rules.**

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Under employers' liability act of Alabama there may be recovery for wilfulness, wantonness, or intentional wrong.

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- Constitutional law, sec. 24, ch. 39 and sec. 57, ch. 54, Code 1891, in allowing subscriptions by magisterial districts in aid of railroads and other works of internal improvement are not unconstitutional, and such subscriptions are valid.  
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Abatement of railroad as a nuisance.

Alabama & V. R. Co. *v.* Bloom (Miss.), vol. 1, p. 28.

A city cannot compel the removal of all railroad tracks from the public streets simply because those who live near the tracks are disturbed by those annoyances incident to the operation of all railroads.

City of Chicago *v.* Union Stock Yard & Transit Co. (Ill.), vol. 7, p. 490.

Consent to use of street.

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Impairment of obligation of contracts where the contract is between railroads and cities.

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It is competent for a state to supervise, control and change agreements between a city and a railroad company as to the construction and maintenance of a viaduct at an important crossing, within a populous city, saving any rights previously vested.

Chicago, B. & O. R. Co. *v.* State of Nebraska (U. S.), vol. 10, p. 423.

Municipal authorities estopped by acquiescence and affirmative acts from denying right of company to maintain its track in streets.

City of Chicago *v.* Union Stock Yard & Transit Co. (Ill.), vol. 7, p. 490.

Municipal consent to railroads in streets, ratification.

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Ordinance requiring railroad companies to construct and keep in repair viaducts over streets crossed by their tracks.

Chicago, B. & O. R. Co. *v.* State ex rel. City of Omaha (Neb.), vol. 3, p. 578.

Railroad using its track in connection with stock yards and thereby creating a serious nuisance in streets of city does not authorize the destruction of its tracks by city authorities.

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Authority to use streets, duly given, is a binding contract upon city if acted upon.

City of Belleville *v.* Citizens' Horse Ry. Co. (Ill.), vol. 1, p. 26.

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- Defined location of tracks.
  - West Jersey Traction Co. *v.* Camden Horse-Railroad Co. (N. J.), vol. 4, p. 520.
- Grant of same privileges to third party does not work a forfeiture.
  - Santa Rosa City Railroad Co. *v.* Central Street Railway Co. (Cal.), vol. 1, p. 105.
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- Mandamus to compel mayor to approve permit to construct tracks when company's right is uncertain.
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- sion to a railway company to lay its tracks on certain streets (naming them) and also to construct all necessary switches and turnouts: *held*, that turnouts built in pursuance of such authority unless it clearly appears that the authority has been exceeded are not such an obstruction of the streets as to warrant their summary and forcible removal by police intervention without notice of a hearing. City of Cape May *v.* Cape May D. B. & S. P. R. Co. (N. J.), vol. 7, p. 585.
- Validity of ordinance amending a former ordinance permitting the use of double tracks through the streets and limiting the rights of the company to one track for a short distance in a very crowded and narrow street. Mayor, etc., of City of Baltimore *v.* Baltimore Trust & Guarantee Co. (U. S.), vol. 7, p. 624.
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- Speed in excess of ordinance is negligence, prima facie, where passenger is injured on track.  
Chicago & A. R. Co. v. Winters (Ill.), vol. 12, p. 93.
- Sudden jerk of street car injuring passenger riding on running board.  
Hassen v. Nassau Elec. R. Co. (N. Y.), vol. 12, p. 1.
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- Wilful injury to street railway passenger when he was about to alight.  
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- Connecting Carriers.**  
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- Defense of contributory negligence is no a confession of negligence.  
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- Proximate contributory negligence a defense to action based on simple negligence.  
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- Selecting the more dangerous of two avenues of travel.  
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 Louisiana Western Exten-sion Ry. Co. v. Carstens (Tex. Civ. App.), vol. 12, p. 782.
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- Rebutting presumption of negligence.
  - Louisville & N. R. Co. v. Marbury L. Co. (Ala.), vol. 18, p. 508.
- Speed of train which caused fire not evidence of negligence.
  - Louisville & N. R. Co. v. Marbury L. Co. (Ala.), vol. 18, p. 508.
- Where a statute requires railroads to show absence of negligence causing a fire, the company exonerates itself from liability, in an action where it was claimed that the fire was caused by using a certain engine, by proving that the spark arrester thereon was such as is in common use.
  - Peter v. Chicago & W. M. Ry. Co. (Mich.), vol. 15, p. 541.
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- Liability for injury to servant of another company caused by negligence in leaving switch open as affected by contributory negligence in being in dangerous position.
  - Chicago & A. R. Co. v. Harrington (Ill.), vol. 23, p. 429.
- Licensees.**
  - Sufficiency of complaint in action for injury to licensee at depot.
    - Smith v. Southern Ry. Co. (N. Car.), vol. 23, p. 777.
  - Sufficiency of evidence of negligence in using worn out brake shoe where licensee near track is injured by flying piece.
    - Pennsylvania R. Co. v. Martin (C. C. A.), vol. 23, p. 449.
- Wantonness, sufficiency of evidence where person standing near track at station was injured by train running at rate of speed prohibited by ordinance.
  - Tanner v. Missouri Pac. Ry. Co. (Mo.), vol. 20, p. 809.
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Throwing articles from passing train and injuring employee after working hours.

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- San Antonio & A. P. Ry. Co. v. DeHam (Tex.), vol. 16, p. 843.
- Sirk v. Marion St. Ry. Co. (Ind. App.), vol. 2, p. 381.
- Walker v. McNeill (Wash.), vol. 11, p. 738.
- All defendant's acts of negligence may be alleged in one paragraph of petition.
- Fagg v. Louisville & N. R. Co. (Ky.), vol. 22, p. 171.
- Allegation of complaint.
- Railroad Co. v. Bouldin (Ala.), vol. 5, p. 708.
- Allegation of negligence as a legal conclusion.
- Omaha & R. V. R. Co. v. Wright (Neb.), vol. 4, p. 9.
- Allegation that injuries were inflicted "by reason of all of appellant's negligence" includes an allegation of the negligence of the engineer.
- Indianapolis Union Ry. Co. v. Houlihan (Ind.), vol. 21, p. 915.
- Count defective for setting forth separate causes of action.
- Clements v. Alabama Great Southern R. Co. (Ala.), vol. 19, p. 266.
- Employee whose negligence was cause of injury need not be specified in complaint.
- Rinard v. Omaha, etc., Ry. Co. (Mo.), vol. 22, p. 34.
- Evidential facts constituting need not be pleaded.
- Connell v. Chesapeake & O. R. Co. (Ky.), vol. 19, p. 237.
- General allegation of negligence.
- Omaha, etc., R. Co. v. Wright (Neb.), vol. 5, p. 419.
- General allegation of negligence followed by enumeration of specific acts.
- McManamee v. Missouri Pac. R. Co. (Mo.), vol. 5, p. 474.
- Held*, that an allegation in the complaint herein to the effect that the defendant negligently ran certain cars against a tender with such force as to injure the plaintiff is sustained by proof that it negligently omitted to do an act from which such results followed.
- Olson v. Great Northern Ry. Co. (Minn.), vol. 7, p. 241.

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- Instructions limited as to negligence alleged.
- Moss v. North Carolina R. Co. (N. Car.), vol. 12, p. 19.
- More negligence in ejecting trespasser does not give right to recover, where complaint is based on wanton negligence.
- Wabash R. Co. v. Kingsley (Ill.), vol. 13, p. 835.
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- Brown v. Chicago, R. I. & P. Ry. Co. (Kan.), vol. 11, p. 408.
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- Variance between pleading and proof.
- Coulter v. Great Northern Ry. Co. (N. Dak.), vol. 4, p. 336.
- Where pleader relies upon one or more specific acts, evidence of any other acts is irrelevant.
- Omaha, etc., R. Co. v. Wright (Neb.), vol. 5, p. 419.
- Wilful negligence.
- Louisville & N. R. Co. v. Anchors (Ala.), vol. 11, p. 657.
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- Chesapeake & O. Ry. Co. *v.* Howard (U. S.), vol. 17, p. 660.
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- Question of fact where evidence is conflicting.
- Cox *v.* Norfolk & C. R. Co. (N. Car.), vol. 12, p. 390.
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- Speed within city limits may be negligence in absence of either municipal regulations or statute.
- Sundmaker *v.* Yazoo & M. Val. R. Co. (La.), vol. 22, p. 496.
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- Sundmaker *v.* Yazoo & M. Val. R. Co. (La.), vol. 22, p. 496.

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- Statutory rule as a presumption of negligence does not apply in action against receivers.
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- Presumption of negligence from injury to stock.  
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Refusal by circuit court of new trial not reviewable either on ground of insufficiency of evidence or of excessive damages.

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Kansas City, etc., Ry. Co. *v.* McElroy (Mo.), vol. 22, p. 398.

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Central of Ga. Ry. Co. *v.* Perkerson (Ga.), vol. 21, p. 63.

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Merrielee *v.* Wabash R. Co. (Mo.), vol. 22, p. 158.

Where only appeal is based on inadequacy of damages trial of cause will be confined to that issue.

Strother *v.* Aberdeen & A. R. Co. (N. Car.), vol. 12, p. 122.

**NEW TRIALS—Continued.**

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Speed prohibited by ordinance must be shown to have been proximate cause of accident.

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The city council of Cape May by an ordinance granted permission to a railroad company to lay its tracks on certain streets (naming them) and also to construct all necessary switches and turnouts: *held*, that turnouts built in pursuance of such authority, unless it clearly appears that the authority has been exceeded, are not such an obstruction of the streets as to warrant their summary and forcible removal by police intervention without notice of a hearing.

City of Cape May *v.* Cape May, D. B. & S. P. R. Co. (N. J.), vol. 7, p. 585.

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Farmers' Loan & Trust Co. v. Longworth (C. C. A.), vol. 9, p. 201.

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*Tuttle v. Atlantic City R. Co. (N. J.)*, vol. 22, p. 876.

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Hearsay evidence of what plaintiff said to physician in action for injuries to passenger.

Webber v. St. Paul City Ry. Co. (Minn.), vol. 6, p. 775.

In an action to recover for personal injuries, it was not error to refuse an instruction that if the plaintiff was injured by the collision he was bound by law to use ordinary care, not to aggravate the injury. It was therefore his duty to employ such medical assistance as ordinary prudence in his situation required.

Chicago & E. R. Co. v. Meech (Ill.), vol. 7, p. 667.

**PIPES.**

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**PLATFORMS.**

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A passenger on a train instead of leaving it by a safe exit which was provided, alighted on the other side on a platform which was so narrow that he was injured by a second train which came up on the opposite side of the platform.

Illinois Cent. R. Co. v. Davidson (U. S.), vol. 7, p. 715.

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**Blending causes of action.**

*Chicago, R. I. & P. R. Co. v. O'Neill (Neb.), vol. 13, p. 371.*

**Carriers of Goods.**

**A count of the declaration in an action to recover the value of goods destroyed through the alleged negligence of a common carrier which alleges both a consideration and a promise, is one ex contractu, and not ex delictu.**

*Tallassee Falls Mfg. Co. v. Western Ry. of Alabama (Ala.), vol. 10, p. 339.*

**Action against carrier for injury to shipper's servant, where car was transferred to shipper over connecting lines.**

*Olson v. Pennsylvania & O. Fuel Co. (Minn.), vol. 15, p. 837.*

**Failure to allege plaintiff was owner or that he was the party with whom contract of shipment was made.**

*United States Mail Line Co. v. Carrollton Furniture Mfg. Co. (Ky.), vol. 9, p. 286.*

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**Declaration in action to recover for injuries to live stock defective in not averring compliance with condition precedent in contract.**

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*Ranchau v. Rutland R. Co.*  
(Vt.), vol. 14, p. 416.

Alleging knowledge in action by passengers injured by mail pouch thrown from train.

*Shaw v. Chicago & G. T. Ry. Co.* (Mich.), vol. 18, p. 131.

Complaint in action for injuries to passenger alighting temporarily at intermediate station not demurrable because it did not state plaintiff's object in alighting.

*Missouri, K. & T. Ry. Co. v. Overfield* (Tex. Civ. App.), vol. 12, p. 207.

Complaint in action for injury to passenger which charges that negligence of defendant's servants occasioned such injuries and sets forth the acts causing them is not demurrable for failure to state which act or acts were negligent.

*Missouri, K. & T. Ry. Co. v. Overfield* (Tex. Civ. App.), vol. 12, p. 207.

Exemplary damages for ejection of passengers.

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*Brockett v. Fair Haven & W. R. Co.* (Conn.), vol. 20, p. 406.

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*Wright v. Union R. Co.* (R. I.), vol. 18, p. 234.

Need not plead that injury to passengers was actionable under law of foreign state.

*Illinois Cent. R. Co. v. Kuhn* (Tenn.), vol. 22, p. 324.

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Right to plead in the alternative to meet the possible conditions of testimony, in action for injury to passenger in a collision.

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Sufficiency of answer in action for injury to passenger.

*Highland Ave. & B. R. Co. v. Swope* (Ala.), vol. 13, p. 856.

Where passenger sues company selling ticket for injuries received while being carried by another company, the contract between the two companies is a matter of defense.

*Barkman v. Pennsylvania R. Co.* (N. J.), vol. 12, p. 250.

Whether misjoinder in pleading injury to passenger's good name not as separate cause of action.

*Procter v. Southern California Ry. Co.* (Cal.), vol. 19, p. 77.

Challenging plaintiff's competency to sue.

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*Illinois Cent. R. Co. v. Nall* (Ky.), vol. 16, p. 828.

*Johnson v. Louisville & N. R. Co.* (Ala.), vol. 2, p. 381.

*Kansas City, M. & B. R. Co. v. Lackey* (Ala.), vol. 7, p. 769.

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*Sirk v. Marion St. R. Co.* (Ind. App.), vol. 2, p. 381.

Negating contributory negligence.

*Chicago & E. R. Co. v. Thomas* (Ind.), vol. 9, p. 181.

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- Plaintiff need not allege due care in action for personal injuries where petition does not show contributory negligence.  
*Galveston, H. & H. R. Co. v. Bohan* (Tex.), vol. 12, p. 490.
- Pleading absence of contributory negligence in federal courts.  
*Chicago G. W. Ry. Co. v. Price* (C. C. A.), vol. 16, p. 324.
- Sufficiency of general allegation, in answer, of contributory negligence on part of plaintiff.  
*Chicago, B. & Q. R. Co. v. Oyster* (Neb.), vol. 12, p. 656.
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- Count combining statutory and common-law negligence.  
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- Counts, election.  
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- Cross-referring counts.  
*Florida Cent. & P. R. Co. v. Foxworth* (Fla.), vol. 13, p. 469.
- Crossings.**
- A complaint alleging a failure to give signals, sufficiently alleges negligence of defendant, in an action for injuries at a crossing; and a general allegation of freedom from fault is a sufficient denial that plaintiff's contributory negligence was the proximate cause of his injury.  
*Baltimore & O. S. W. R. Co. v. Young* (Ind.), vol. 6, p. 349.
- Defect in petition cured in action for defendant's failure to furnish proper wagon ways.  
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- Negligence in failing to give signals.  
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- Sufficiency of complaint in action to compel construction of crossing in street.  
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- There can be no recovery for failure to observe common-law duty of ordinary care towards the person on a street crossing where the only cause of action alleged is defendant's breach of duty as a carrier of passengers.  
*Chicago & E. I. R. Co. v. Jennings* (Ill.), vol. 22, p. 127.
- Wantonness or willful negligence, in obstructing crossing.  
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Interest must be claimed in complaint.

Haner v. Northern Pac. Ry. Co. (Idaho), vol. 19, p. 628.

Motion to strike the whole will not be granted where count contains both proper and improper elements of damage.

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Pecuniary loss need not be specifically alleged in action by widow for death.

Haug v. Great Northern Ry. Co. (N. Dak.), vol. 12, p. 26.

Petition in action for death by wrongful act must show pecuniary interest of beneficiary.

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Plaintiff cannot claim or recover damages upon grounds of negligence other than those alleged in his petition.

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Harmless error in overruling demurrer, in action for wrongful death where complaint contained several good counts.

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Bias v. Chesapeake & O. Ry. Co. (W. Va.), vol. 13, p. 616.

Petition under Lord Campbell's act not bad on demurrer for failure to allege whether deceased left a widow, if the names of the surviving minor children are averred.

Chicago, B. & O. R. Co. v. Oyster (Neb.), vol. 12, p. 656.

Defective complaint cured by verdict.

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Effect of demurrer where declaration contains two or more counts, one of which is good.

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Evidential facts constituting negligence need not be pleaded.

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Pleading negligence in action to recover for damages caused by fire.

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Sufficiency of statement of cause of action for destruction of property by fire set by locomotive.

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Employee whose negligence was cause of injury need not be specified in complaint.

Rinard *v.* Omaha, etc., Ry. Co. (Mo.), vol. 22, p. 34.

Failure of master to make and enforce proper rules not a sufficient averment of an element of negligence upon which to base an action for injuries to an employee.

Delaware, L. & W. R. Co. *v.* Voss (N. J.), vol. 12, p. 820.

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- Failure to aver name of negligent employee.  
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- Failure to give signals, insufficiency of declaration.  
*Savannah, F. & W. Ry. Co. v. Chaney* (Ga.), vol. 11, p. 1.
- In an action by a baggage master to recover for injuries alleged to have been caused by the negligence of the engineer in running the train it is not necessary that the petition should allege that they are fellow servants.  
*Chicago & A. Ry. Co. v. Swan* (Ill.), vol. 12, p. 674.
- Knowledge of defective appliances.  
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- Sufficiency of allegation to show defective track.  
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- Negligence.**  
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*Crawford v. Southern Ry. Co.* (Ga.), vol. 16, p. 829.  
*Illinois Cent. R. Co. v. Davis* (Tenn.), vol. 18, p. 708.  
*Keating v. Detroit, B. C. & A. R. Co.* (Mich.), vol. 2, p. 382.  
*New York, N. H. & H. R. Co. v. O'Leary* (C. C. A.), vol. 14, p. 718.  
*San Antonio & A. P. Ry. Co. v. De Ham* (Tex.), vol. 16, p. 843.

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- Schweinfurth v. Cleveland, C., C. & St. L. Ry. Co.* (Ohio), vol. 15, p. 73.  
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*Sirk v. Marion St. R. Co.* (Ind. App.), vol. 2, p. 381.  
*Walker v. McNeill* (Wash.), vol. 11, p. 738.
- Defective brake may be shown under general allegation of negligence.  
*Walton v. Chattanooga Rapid Transit Co.* (Tenn.), vol. 19, p. 436.
- General allegation of negligence followed by enumeration of specific acts.  
*McManamee v. Missouri Pac. R. Co.* (Mo.), vol. 5, p. 474.
- Held*, that an allegation in the complaint herein to the effect that the defendant negligently ran certain cars against a tender with such force as to injure the plaintiff is sustained by proof that it negligently omitted to do an act from which such result followed.  
*Olson v. Great Northern Ry. Co.* (Minn.), vol. 7, p. 241.
- Reckless negligence.  
*Louisville & N. R. Co. v. Anchors* (Ala.), vol. 11, p. 657.
- Variance between pleading and proof.  
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- Objection to form waived by submitting to default.  
*Brockett v. Fair Haven & W. R. Co.* (Conn.), vol. 20, p. 406.
- Overflow of Land.**  
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- Sufficiency of petition.  
*Fremont, etc., R. Co. v. Harlin* (Neb.), vol. 8, p. 766.
- Plaintiff confined to negligence alleged in petition.  
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**Railroads in Streets.**

Right to recover at common law for injuries caused by piling cinders in street near track, where violation of ordinance was also alleged.

Anderson *v.* Union Terminal R. Co. (Mo.), vol. 20, p. 834.

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**Crossings.**

*A train remained across a street crossing for some time and plaintiff, undertaking to go around it, sustained injuries caused by a defect in the street. Negligence of the company held not the proximate cause.*

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- Frightening Teams.**  
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Where an associate alleged to have been acting as vice-principal slipped while holding in position a pole which fell upon and injured plaintiff.

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**PUBLIC LANDS.**

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*Chicago, R. I. & P. Ry. Co. v. Parks* (Kan.), vol. 14, p. 808.
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- A city cannot compel the removal of all railroad tracks from the public streets simply because those who live near the tracks are disturbed by those annoyances incident to the operation of all railroads.
- City of Chicago *v.* Union Stock Yard & Transit Co. (Ill.), vol. 7, p. 490.
- A corporation organized under the general railroad law has not, ordinarily, the right to occupy highways of this state longitudinally with its railway.
- Tallon *v.* Mayor, etc., of City of Hoboken (N. J.), vol. 7, p. 545.
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Injury to child through violation of ordinance limiting speed.

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Liability for injury to boy playing on cross-ties piled in public street.

Kramer *v.* Southern Ry. Co. (N. Car.), vol. 20, p. 329.

Collision between train backing through city and another train, negligence and contributory negligence.

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Compliance with municipal regulations on the subject of blasting will not relieve from liability for negligence in blasting.

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## Conditions.

A condition, inserted in the ordinance of a city council permitting a railway company to construct and operate a track on certain streets, that the privileges granted by such ordinance should be forfeited if such

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company did not extend its line to certain points beyond the city limits, is void. The city may prescribe lawful and proper terms, but such a condition is not within its authority. Galveston & W. R. Co. *v.* City of Galveston (Tex.), vol. 7, p. 72.

Illegal conditions attached to grant of consent by municipality.

Galveston & W. Ry. Co. *v.* City of Galveston (Tex.), vol. 7, p. 779.

Municipal authority to impose conditions.

Pittsburg, C., C. & St. L. Ry. Co. *v.* Hood (C. C. A.), vol. 15, p. 648.

Consent of municipality to occupation of street cannot be basis of second application.

State *v.* City of Atlantic City (N. J.), vol. 23, p. 958.

Consent to occupation of street by street railway.

Berkeley *v.* C. & O. Ry. Co. (W. Va.), vol. 8, p. 757.

State *v.* City of Atlantic City (N. J.), vol. 23, p. 958.

## Contributory Negligence.

A person walking on a railroad track in a street, saw an engine approaching, and stepped off that track upon another, not stopping in the space intervening between the two tracks: *held*, he was guilty of contributory negligence if he would have been safe in the intervening space.

McIlhane *v.* Southern R. Co. (N. Car.), vol. 6, p. 693.

Care to be exercised by a person who crosses track.

Texas & P. Ry. Co. *v.* Cody (U. S.), vol. 7, p. 479.

Effect of contributory negligence in having defective brake on wagon in action for personal injuries caused by unguarded street railway embankment in highway.

Nosler *v.* Coos Bay, etc., R. & Nav. Co. (Ore.), vol. 22, p. 719.

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## Crossings.

An ordinance against the crossing by railroad trains of certain streets in a city before coming to a full stop is not on its face unreasonable.

City of Buffalo *v.* New York, L. E. & W. R. Co. (N. Y.), vol. 7, p. 503.

Care required of both railroad and pedestrian.

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Obstruction of crossing.

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Right of railroad company to answer petition of grade crossing commissioners to determine the compensation to be paid owners of lands injured by a change of street grade so as to make it possible to cross by a viaduct instead of at grade.

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Florida Cent. & P. R. Co. *v.* Foxworth (Fla.), vol. 13, p. 469.

Sufficiency of petition for appointment of grade crossing commissioners.

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Damages for injury to property abutting on alley caused by operation of railroad.

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Damages to abutting property a question for jury.

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Damages where a switch is built upon a curve and runs so close to the side of the street upon which the plaintiff resides that a team cannot stand there clear of the track.

Patton *v.* Olympia Door & Lumber Co. (Wash.), vol. 5, p. 13.

Elements of damage for injury to adjacent property.

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Measure of damages in action for injury to property.

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Guinn *v.* Ohio River R. Co. (W. Va.), vol. 13, p. 437.

Dedication, a person who dedicates land to public use as a highway may, in such dedication, reserve to himself and his assigns the right to construct and operate a railroad therein. When such reservation is made, the public takes the highway cum onere.

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Dedication of street shown by plat of railroad land.

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Duty of railroad to restore highway, statute.

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Evidence to show location of highway in action for personal injuries caused by unauthorized excavation made by street railway company.

*Nosler v. Coos Bay, etc., R. & Nav. Co.* (Ore.), vol. 22, p. 719.

Exclusive right to operate subordinate to prior right of another railroad to allow switch connections for delivering and receiving freight.

*Chicago, etc., Ry. Co. v. Louisville, etc., R. Co.* (Ky.), vol. 19, p. 688.

Failure to prosecute others as a defense where action is brought to recover penalty.

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Frightening teams, where injury is caused by horse being frightened by train which was being operated in daytime in violation of ordinance, such violation was the proximate cause of the injury.

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Municipal authorities estopped by acquiescence and affirmative acts from denying right of company to maintain its track in streets.

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- People *v.* Northern Cent. Ry. Co. (N. Y.), vol. 21, p. 192.
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- Railroad's use of its tracks in connection with stock yards, thereby creating a serious nuisance in streets of city, does not justify the destruction of its tracks by city authorities.
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**RATES.**

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- Statutory right to select location in exercising power of eminent domain.  
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- Sufficiency of judgment to vest right of way.  
Ft. Worth Ice Co. *v.* Chicago, R. I. & T. R. Co. (Tex.), vol. 3, p. 169.
- Sufficiency of notice of existence of unrecorded deed of right of way.  
Chicago & E. I. R. Co. *v.* Wright (Ill.), vol. 1, p. 716.
- Title against railroad cannot be acquired by prescription.  
Southern Pac. Co. *v.* Hyatt (Cal.), vol. 20, p. 576.
- Title by actual and continuous possession.  
Chicago, M. & St. P. Ry. Co. *v.* Grant (Ill.), vol. 11, p. 823.
- Title by adverse possession could not be defeated on ground that occupation was not inconsistent with use for railroad purposes.  
Northern Pac. Ry. Co. *v.* Ely (Wash.), vol. 22, p. 90.
- Unauthorized acceptance of conveyance in fee by railroad cannot be collaterally attacked by private persons.  
Hicks, Atty. Gen., Askew *v.* Smith (Wis.), vol. 20, p. 694.

**RIGHT OF WAY—Continued.**

Validity of condition as to stoppage of accommodation trains, public policy.

Gray *v.* Chicago, M. & St. P. R. Co. (Ill.), vol. 21, p. 252.

Verbal contract for right of way. Texas & P. Ry. Co. *v.* Scott (C. C. A.), vol. 8, p. 309.

Way of necessity, a person who has conveyed a right of way through his land to a railroad company, and thereby cuts off access to a part of his land has a way of necessity over the land conveyed to the railroad company.

New York & New England Railroad Co. *v.* Railroad Commissioners (Mass.), vol. 1, p. 660.

Way of necessity, conveyance with release of damages by reason of the location or construction, does not release grantor's right to a way of necessity across the right of way.

New York & New England Railroad Company *v.* Railroad Commissioners (Mass.), vol. 1, p. 660.

What presumed as included in the consideration for.

Moseley *v.* Chicago, B. & O. R. Co. (Neb.), vol. 15, p. 426.

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Lyman *v.* Suburban R. Co. (Ill.), vol. 21, p. 828.

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Virginia & S. W. Ry. Co. *v.* Crow (Tenn.), vol. 23, p. 506.

Whether grantor's occupation for farming purposes was adverse or permissive.

Northern Counties Inv. Trust, Limited, *v.* Enyard (Wash.), vol. 20, p. 830.

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Lyman *v.* Suburban R. Co. (Ill.), vol. 21, p. 828.

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Admissibility of evidence of habitual disregard of rules, in action for injury to employee, to excuse plaintiff's violation of rules.

Louisville & N. R. Co. *v.* Hiltner (Ky.), vol. 20, p. 279.

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- Effect of customary violation by employees.  
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- Knowledge of rules must be pleaded.  
Union Stock-Yards Co. v. Goodwin (Neb.), vol. 12, p. 502.
- Mail clerks may rely on rules as to movement of train near station.  
Chicago & A. R. Co. v. Kelly (Ill.), vol. 17, p. 52.
- Reasonableness and sufficiency of standard rules.  
Little Rock & M. R. Co. v. Barry (C. C. A.), vol. 11, p. 453.
- Sufficiency of, a question of law.  
Little Rock & M. R. Co. v. Barry (C. C. A.), vol. 11, p. 453.
- Sufficiency of, to prevent collisions.  
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- Violation of, as contributory negligence.  
Shorter v. Southern Ry. Co. (Ala.), vol. 18, p. 761.
- Where the rules of a company were substantially the same as those of 90 per cent. of the railroads of the United States, it was held error to find that defendant failed to exercise proper supervision of the running of the train.  
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- Obligation of vendor.  
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- Ohio acts of May 4, 1885, not applicable to conditional sale of equipment to railroad companies, which were especially provided for by acts March 16, 1882.
- Metropolitan Trust Co. v. Railroad Equipment Co. (C. C. A.), vol. 22, p. 144.
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Distance at which to be given. Illinois C. R. Co. v. Davis (Tenn.), vol. 18, p. 708.

Duty of company to give at points other than crossings. Florida Cent. & P. R. Co. v. Foxworth (Fla.), vol. 13, p. 469.

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- Negligence in failing to give as affected by contributory negligence.
- Neal v. Carolina Cent. R. Co. (N. Car.), vol. 18, p. 51.
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- Missouri, etc., Ry. Co. v. Geist (Neb.), vol. 5, p. 421.
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**SLEEPING CAR COMPANIES.**

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- Dawley v. Wagner, etc., Co. (Mass.), vol. 8, p. 766.
- Pullman's Palace Car Co. v. Martin (Ga.), vol. 2, p. 475.
- Delivery of baggage between cars and station.
- Voss v. Cleveland, O., C. & St. L. R. Co. (Ind. App.), vol. 3, p. 427.
- Liability for delivery of baggage between cars and station.
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- Pullman's Palace Car Co. v. Hall (Ga.), vol. 14, p. 229.
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**SLEEPING CAR COMPANIES—Continued.**

- Car Co. (C. C. A.), vol. 10, p. 277.
- Failure to awaken passengers.
- McKeon v. Chicago, M. & St. P. Ry. Co. (Wis.), vol. 8, p. 219.
- For what articles of passengers responsible.
- Cooney v. Pullman Palace Car Co. (Ala.), vol. 18, p. 587.
- Injury to passenger through negligence of porter.
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- Pullman's Palace Car Co. v. Harvey (Ga.), vol. 10, p. 77.
- Liability for loss of passenger's property.
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- Liability of company for negligence of sleeping car employees.
- Airey v. Pullman Palace Car Co. (La.), vol. 11, p. 836.
- Liability of railroad company in Illinois for assault by porter on passenger.
- Pullman Palace Car Co. v. Lawrence (Miss.), vol. 8, p. 59.
- Liability of sleeping car company where passenger is murdered.
- Connell v. Chesapeake & O. R. Co. (Va.), vol. 5, p. 333.
- Right of passenger to recover for injuries caused by car window being left open.
- Edmunson v. Pullman Palace Car Co. (C. C. A.), vol. 14, p. 336.
- Sleeping car employees as railway employees.
- Louisville & N. R. Co. v. Ray (Tenn.), vol. 11, p. 174.



# **SLEEPING CAR COMPANIES SPECIFIC PERFORMANCE—**

—*Continued.*

Where a railway company has sold a sleeping car ticket to a point on its road where the passenger has to change cars in order to reach her destination, it is the duty of such company to awaken the passenger in sufficient time to allow her to dress, or, if it has failed to do so, to hold the train until she can dress in a manner suitable to make such change of cars, and the neglect of the company to perform such duty, resulting in damage to the passenger is sufficient to authorize a recovery, even though the duty is not expressly prescribed in the contract of carriage.

*McKeon v. Chicago, M. & St. P. Ry. Co. (Wis.), vol. 8, p. 219.*

## **SMOKING.**

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## **SNOW SLIDE.**

Derailement of train.

*Denver & R. G. R. Co. v. Pilgrim (Colo.), vol. 8, p. 249.*

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## **SPECIAL DAMAGES.**

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*Vicksburg, S. & P. R. Co. v. Scott, Sheriff (La.), vol. 17, p. 745.*

## **SPECIAL INTERROGATORIES.**

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## **SPECIFIC PERFORMANCE.**

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*O'Beirne v. Alleghany & K. R. Co. (N. Y.), vol. 10, p. 860.*

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Fraud in procuring contract to convey right of way.

*Grand Tower & Cape Girardeau Railroad Co. v. Wolton (Ill.), vol. 1, p. 686.*

Lease of land to railroad company for stock yards with option of purchase.

*Bacon v. Kentucky Cent. Railway Co. (Ky.), vol. 1, p. 718.*

Right to use bridge.

*Union Pac. Ry. Co. v. Chicago, etc., Ry. Co. (U. S.), vol. 6, p. 1.*

Street railways, contract to supply electric power to street railroad.

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## **SPECULATIVE DAMAGES.**

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## **SPEED.**

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*Proximate Cause.*

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*Railroads in Streets.*

*Stock, Injuries to.*

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*Yards.*

Contributory negligence as affected by failure to give signals and excessive speed.  
*Schneider v. Chicago, M. & St. P. Ry. Co. (Wis.), vol. 11, p. 81.*

Contributory negligence cures failure to admit evidence of ordinance limiting speed.

*Sutherland v. Cleveland, C., C. & St. L. Ry. Co. (Ind.), vol. 8, p. 424.*

Crossings.

*Louisville, N. A. & C. Ry. Co. v. Patchen (Ill.), vol. 10, p. 852.*

Crossings, running a railroad train at a country crossing at the rate of forty miles an hour is not negligence per se.  
*Sutton v. Chicago, etc., Ry. Co. (Wis.), vol. 10, p. 100.*

**SPEED—Continued.**

Evidence as to speed of train in action for personal injury at crossing.

*Overtoom v. Chicago & E. I. R. Co. (Ill.), vol. 15, p. 849.*

Failure to instruct where no special rate prescribed.

*Driver v. Atchison, T. & S. F. Ry. Co. (Kan.), vol. 10, p. 98.*

Ordinances regulating, admissible as evidence.

*Overtoom v. Chicago & E. I. R. Co. (Ill.), vol. 15, p. 849.*

Ordinances regulating speed of street railway car.

*State v. City of Cape May (N. J.), vol. 6, p. 507.*

Passing between station and train at high rate of speed.

*Chicago, etc., Ry. Co. v. Ryan (Ill.), vol. 8, p. 754.*

Rate of speed not negligence per se.

*Omaha & R. V. R. Co. v. Krayenbuhl (Neb.), vol. 4, p. 483.*

Right of engineer to recover for injury received while running at speed in excess of ordinance.

*Missouri, K. & T. Ry. Co. v. Roberts (Tex.), vol. 11, p. 21.*

Speed in excess of ordinance is negligence prima facie.

*Chicago & A. R. Co. v. Winters (Ill.), vol. 12, p. 93.*

Trespasser on track in city limits injured by train running at excessive rate of speed.

*Schug v. Chicago, M. & St. P. Ry. Co. (Wis.), vol. 15, p. 705.*

Under Mississippi Code 1892, § 3546, ch. 63, speed within city limits in violation of statute will not render company liable for fires set by locomotive exceeding such speed, unless proximate cause.

*Clisby v. Mobile & O. R. Co. (Miss.), vol. 22, p. 179.*

Violation of city ordinances regulating, as negligence per se.

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*Schug v. Chicago, M. & St. P. Ry. Co. (Wis.), vol. 15, p. 705.*

Whether speed in excess of ordinance is negligence per se.

*Reidel v. Phila., W. & B. R. Co. (Md.), vol. 10, p. 91.*

**SPUR TRACKS.**

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**STATE RAILROAD COMMISSIONS.**

*See Railroad Commissions.*

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*Smith v. Reeves (U. S.), vol. 19, p. 591.*

**STATION AGENTS.**

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*Carriers of Passengers.*

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**STATIONS AND DEPOTS.**

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Absence of station facilities on partially constructed road.

*Chicago, Kansas & Western R. Co. v. Frazer (Kan.), vol. 2, p. 206.*

Action by individual the value of whose property is injured by change of depot.

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## STATIONS AND DEPOTS—STATIONS AND DEPOTS—

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- Action of railroad commissioners in permitting abandonment of station is subject to review by certiorari.  
*People, Loughran v. Board of R. Com'rs of State of N. Y.* (N. Y.), vol. 15, p. 441.
- Agreement to erect stations, perpetual maintenance.  
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- Backing of car upon passenger leaving railroad premises.  
*Dallas & O. C. R. Co. v. Reeman* (Tex. Civ. App.), vol. 2, p. 281.
- Carriers of passengers, evidence that defective platform causing injury was crowded.  
*Indianapolis St. Ry. Co. v. Robinson* (Ind.), vol. 23, p. 628.
- Change of depot grounds.  
*Missouri, etc., Ry. Co. v. Colburn* (Tex.), vol. 6, p. 787.
- Contract between company and citizens for stopping trains at certain stations is not enforceable by the railroad commissioners.  
*People, Loughran v. Board of R. Com'rs of State of N. Y.* (N. Y.), vol. 15, p. 441.
- Contributory negligence, injury to passenger while leaving railroad premises.  
*Illinois Central R. Co. v. Davidson* (C. C. A.), vol. 2, p. 265.
- Contributory negligence, leaving railway premises by unsafe route.  
*St. Louis, I. M. & S. R. Co. v. Cox* (Ark.), vol. 2, p. 280.
- Court's jurisdiction to direct location of union station.  
*Concord & M. R. R. v. Boston & M. R. R.* (N. H.), vol. 14, p. 458.
- Defective platform, negligence as matter of law.  
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- Duty of company to keep in safe condition.  
*Eichorn v. Missouri, K. & T. R. Co.* (Mo.), vol. 2, p. 279.
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- Madden v. Port Royal & W. C. R. Co.* (S. Car.), vol. 2, p. 279.
- Duty of railroad company to furnish proper station facilities.  
*Warren v. Fitchburg R. Co.* (Mass.), vol. 2, p. 283.
- Duty of railroad to maintain a wagon way to freight yard.  
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- Duty to establish and maintain depot under Georgia statute.  
*Page v. Louisville & N. R. Co.* (Ala.), vol. 21, p. 1.
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*Hathaway v. Detroit, etc., Ry. Co.* (Mich.), vol. 19, p. 714.
- Duty to maintain waiting room.  
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- Effect of depot grounds being in excess of legal limit where stock are injured because of failure to fence.  
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- Evidence of usage of a railroad company that one train should not enter station while another is delivering passengers.  
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Ranney *v.* St. Johnsbury & L. C. R. Co. (Vt.), vol. 2, p. 282.

Foot stools, negligence in failing to provide.

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**Hackmen.**

Cannot take up stand on street running through company's premises.

New York, etc., R. Co. *v.* Bork (R. I.), vol. 22, p. 511.

Defences in action to enjoin trespasses by hackmen.

Boston & M. R. R. *v.* Sullivan (Mass.), vol. 20, p. 356.

Discrimination in admitting hackmen.

Pennsylvania Co. *v.* City of Chicago (Ill.), vol. 15, p. 618.

Enjoining establishment by municipality of hack stand in street before station.

Pennaylvania Co. *v.* City of Chicago (Ill.), vol. 15, p. 518.

Establishment of hack stands in front of depots.

Pennsylvania Co. *v.* City of Chicago (Ill.), vol. 15, p. 618.

**Exclusive privileges.**

Godbout *v.* St. Paul Union Depot Co. (Minn.), vol. 16, p. 821.

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Local carrier guilty of trespass in going upon station ground to solicit patronage after being notified of exclusive privilege of rival carrier.

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Godbout *v.* St. Paul Union Depot Co. (Minn.), vol. 16, p. 821.

Trespasses by hackmen, sufficiency of bill to enjoin.

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Validity of agreement with stranger to suit giving him exclusive privileges on depot premises could not be brought in issue by defendant, in trespass against hackmen for remaining on company's premises to solicit traffic.

New York, etc., R. Co. *v.* Bork (R. I.), vol. 22, p. 511.

Implied invitation to enter.

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Ziegler *v.* Lake St. El. R. Co. (C. C. A.), vol. 23, p. 1.

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*Southern Ry. Co. v. Reaves (Ala.)*, vol. 20, p. 784.

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*Evans v. Sherman, S. & S. Ry. Co. (Tex.)*, vol. 5, p. 184.

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Company's negligence where it killed a cow between street crossings in a populous town, while running at high rate of speed without signals, is for jury.

*Ford v. St. Louis, I. M. & S. Ry. Co. (Ark.)*, vol. 15, p. 142.

Company not liable for injury to, where there is absence of proof of negligence.

*Jones v. Oregon Short Line R. Co. (Idaho)*, vol. 14, p. 26.

Conflict of evidence as to whether the animal was standing on the track when the train was more than one mile distant and remained there until struck, or came suddenly in front of the passing train.

*Bennett v. Chicago, M. & St. P. Ry. Co. (S. Dak.)*, vol. 5, p. 148.

Constitutionality of statute imposing a penalty of double the value of stock killed for failure to give notice.

*Joliffe v. Brown (Wash.)*, vol. 3, p. 254.

Contract stipulating for exemption from liability for injury to stock on certain side track relates exclusively to such side track.

*Weinkle v. Brunswick & W. R. Co. (Ga.)*, vol. 14, p. 50.

**Contributory Negligence.**

*Cornell v. Manistee & N. E. R. Co. (Mich.)*, vol. 11, p. 263.

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*Hutchinson v. Chicago, etc., Ry. Co. (S. Dak.)*, vol. 5, p. 714.

Contributory negligence no defense, if negligence was proximate cause.

*Sauls v. D. W. Alderman & Sons Co. (S. Car.)*, vol. 15, p. 558.

In action for injury to stock under Wisconsin statute, contributory negligence is not a defence.

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- Leaving team insufficiently hitched.  
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*Cully v. Louisville & N. R. Co.* (Ky.), vol. 9, p. 872.
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*Terry v. Gulf, etc., Ry. Co.* (Tex. Civ. App.), vol. 5, p. 714.
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*Western & A. R. Co. v. Brown* (Ga.), vol. 10, p. 107.
- Defective fastening to cattle pen.  
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*Louisville & N. R. Co. v. Bowen* (Ky.), vol. 9, p. 276.
- Duty of railroad company in respect to stock is subordinate to its duty to passengers and freight.  
*Kirk v. Norfolk & W. R. Co.* (W. Va.), vol. 4, p. 105.
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*Georgia R. & Banking Co. v. Churchill* (Ga.), vol. 21, p. 17.
- Duty of trainmen where cattle are seen near track.  
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- Duty to fence against hogs unlawfully at large.  
*Kingsbury v. Missouri, etc., Ry. Co.* (Mo.), vol. 19, p. 719.
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- Duty to look out for cattle near track.  
*Southern Ry. Co. v. Reaves* (Ala.), vol. 20, p. 784.
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- Louisville & W. R. Co. v. Hall* (Ga.), vol. 14, p. 7.
- Burden of proof on plaintiff to show that the killing of stock on track was the result of defendant's negligence.  
*Mire v. Yazoo & M. Val. R. Co.* (La.), vol. 21, p. 761.
- Compromise, admissibility in evidence of letter offering compromise, in action for injuries to stock.  
*Chicago, B. & Q. R. Co. v. Roberts* (Colo.), vol. 15, p. 572.
- Evidence as to value of stock.  
*Terry v. Gulf, etc., Ry. Co.* (Tex. Civ. App.), vol. 5, p. 715.

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In an action to recover damages for the negligent killing of stock by a railroad company, evidence to show that signboards had been erected at its crossings and proper signals had been given subsequent to the accident is inadmissible.

Louisville & N. R. Co. v. Bowen (Ky.), vol. 9, p. 276.

Insufficient evidence to warrant recovery for killing of stock.

Schmidt v. Chicago, etc., Ry. Co. (Iowa), vol. 5, p. 714.

Killing stock, testimony of engineer uncontradicted.

Mobile, etc., R. Co. v. Weems (Miss.), vol. 7, p. 788.

Liability of railway companies.

Lake Erie, etc., R. Co. v. Weisel (Ohio), vol. 5, p. 714.

Limitation of actions.

Kansas City, etc., R. Co. v. Whitehead (Ala.), vol. 4, p. 262.

Lookout for trespassing stock.

Keilbach v. Chicago, M. & St. P. Ry. Co. (N. Dak.), vol. 14, p. 28.

Negligence.

Atlanta, etc., R. Co. v. Irwin (Ga.), vol. 8, p. 768.

Blankenship v. Kanawha, etc., Ry. Co. (W. Va.), vol. 8, p. 768.

Notice, place of killing must be designated in.

Ryan v. Chicago & N. W. Ry. Co. (Wis.), vol. 14, p. 4.

Of failure to give crossing signals, in action for injury to stock near crossing.

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Ordinance limiting speed.

Southern Ry. Co. v. Wood (Ky.), vol. 15, p. 570.

Other killings.

Whitmore v. Rio Grande Western Ry. Co. (Utah), vol. 23, p. 742.

Weight of engineer's testimony, in action for injury to stock.

Southern Ry. Co. v. Reaves (Ala.), vol. 20, p. 784.

Failure to construct cattle guards not actionable negligence unless cause of injury.

McGill v. Minneapolis & St. L. R. Co. (Iowa), vol. 20, p. 790.

Failure to give signal and slacken speed for crossing is not negligence per se in action to recover for stock killed beyond crossing.

Georgia R. & B. Co. v. Clary (Ga.), vol. 11, p. 856.

Failure to observe statutory rule in approaching crossing does not render company liable for injuries to stock beyond crossing.

Southern Ry. Co. v. New (Ga.), vol. 14, p. 19.

Fences.

Common law does not require. Sinard v. Southern Ry. Co. (Tenn.), vol. 14, p. 17.

Duty to fence.

Patrie v. Oregon Short-Line R. Co. (Idaho), vol. 14, p. 39.

Failure to fence does not render company liable where stock was not struck by train.

Sinard v. Southern Ry. Co. (Tenn.), vol. 14, p. 17.

Failure to fence track in city not prima facie evidence of negligence.

Ryan v. Northern Pac. Ry. Co. (Wash.), vol. 11, p. 647.

Fencing of switch limits.

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- Liability for failure to keep in repair fence not required by law.
- Georgia S. & F. Ry. Co. *v.* Wisenbaker (Ga.), vol. 22, p. 186.
- Railroad liable for killing stock at place where it should have fence.
- Patrie *v.* Oregon Short Line R. Co. (Idaho), vol. 14, p. 39.
- The fact that a railroad company neglected to fence its track at a place where it could have been fenced does not render it liable for killing a horse prohibited to be at large.
- Evans *v.* Sherman, S. & S. Ry. Co. (Tex.), vol. 5, p. 184.
- Under secs. 1, 2, art. 1, c. 72, Comp. St., a railroad company is liable for injuries caused by a moving train to cattle, horses, sheep or hogs upon its track, at a place where it ought to have been, but was not, fenced, although there was no actual collision between the train and the animals injured.
- Chicago, B. & O. R. Co. *v.* Cox (Neb.), vol. 7, p. 379.
- Gate left open by unknown person without actual or imputable knowledge or notice of the company.
- Kavanaugh *v.* Atchison, T. & S. F. Ry. Co. (Mo.), vol. 21, p. 755.
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*Ryan v. Chicago & N. W. Ry. Co. (Wis.)*, vol. 14, p. 4.
- Notice, a state statute in relating to the killing or injuring of stock upon unfenced railroads provided that written notice should be given to "the nearest station agent of the company to which said railroads shall belong": *held*, that the meaning of such statute was that written notice should be given to the agent nearest the accident, whether living in the same civil district or not.  
*Illinois Cent. R. Co. v. Tilman (Tenn.)*, vol. 7, p. 735.
- Notice, condition precedent to maintenance of action for injuries to.  
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*Graybill v. Chicago, etc., Ry. Co. (Iowa)*, vol. 20, p. 178.

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*Ford v. St. Louis, I. M. & S. Ry. Co. (Ark.)*, vol. 15, p. 142.

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*Ford v. St. Louis, I. M. & S. Ry. Co. (Ark.)*, vol. 15, p. 142.

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*Southern Ry. Co. v. Tharp (Ga.)*, vol. 12, p. 858.

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*Brammer v. Wabash R. Co. (Iowa)*, vol. 22, p. 508.

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*Hardison v. Atlantic & N. C. R. Co. (N. Car.)*, vol. 11, p. 848.

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*Missouri, K. & T. Ry. Co. v. Farrington (Ind. Ter.)*, vol. 11, p. 854.

Where horse was killed twenty feet from a public crossing, a charge to the jury as to statutory requirements to sound whistle for public crossings constituted reversible error.

*Sims v. Southern Ry. Co. (S. Car.)*, vol. 20, p. 76.

Where stock is killed beyond crossing, failure to give signals and slacken speed is not negligence per se.

*Georgia R. & B. Co. v. Clary (Ga.)*, vol. 11, p. 856.

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*Roberds v. Mobile & O. R. Co. (Miss.)*, vol. 7, p. 93.

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*Enix v. Iowa Cent. Ry. Co. (Iowa)*, vol. 23, p. 54.

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**STOP, LOOK AND LISTEN.**

*See Accidents on Track.*  
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**STOP-OVER CHECKS.**

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- Where there was evidence tending to show that a boy injured on street car track was guilty of contributory negligence and that the motorman should have seen him in time to avoid injury, company's liability was a question for jury.  
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- Duty of motorman to exercise watchfulness as to children.  
*Bergen County Traction Co. v. Heitman* (N. J.), vol. 11, p. 286.
- Evidence as to negligence of driver and defective brake where child was injured.  
*Gannon v. New Orleans City, etc., R. Co.* (La.), vol. 6, p. 792.
- Evidence of motorman's negligence insufficient.  
*Fleishman v. Neversink Mountain R. Co.* (Pa. St.), vol. 4, p. 261.
- Imputable negligence, where child is killed.  
*Fox v. Oakland Consol. St. Ry.* (Cal.), vol. 9, p. 825.
- Injury to child on track, negligence.  
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*Beeson v. City of Chicago* (U. S.), vol. 5, p. 715.
- Collisions.**
- Collision at intersection.  
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- Collision between street car and team.  
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*Hall v. Ogden City St. Ry. Co.* (Utah), vol. 4, p. 77.  
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- Collision of street car with vehicle, negligence.  
*Consol. Tract. Co. v. Behr* (N. J.), vol. 8, p. 770.
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*Johnson v. Reading City Pass. R. Co.* (Pa.), vol. 1, p. 255.  
*Rome St. R. Co. v. McGinnis* (Ga.), vol. 1, p. 256.  
*Thatcher v. Central Traction Co.* (Pa.), vol. 1, p. 255.
- Trowbridge v. Danville St. R. Co.* (Va.), vol. 1, p. 256.
- Common Carriers.**
- East Omaha St. R. Co. v. Godola* (Neb.), vol. 7, p. 300.
- Street railway companies are, in this state, common carriers, and as such are required to exercise more than ordinary skill and precaution in order to insure the safety of passengers upon their trains.  
*East Omaha St. R. Co. v. Godola* (Neb.), vol. 7, p. 300.
- Compelling construction of line.  
*San Antonio St. R. Co. v. State ex rel. Elmendorf* (Tex.), vol. 6, p. 658.
- Complaint for personal injuries.  
*Cunningham v. Los Angeles Ry. Co.* (Cal.), vol. 7, p. 783.
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Injury to child at crossing. Consolidated City & C. P. Ry. Co. *v.* Carlson

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Injury to child, contributory negligence of parents.

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Liability for injury to child as affected by contributory negligence.

Sciortino *v.* Crescent City R. Co. (La.), vol. 6, p. 526.

Liability where sudden act of child by reason of which it was injured.

Culbertson *v.* Crescent City R. Co. (La.), vol. 6, p. 522.

No recovery where there was contributory negligence.

Brown *v.* Wilmington City Ry. Co. (Del.), vol. 12, p. 440.

Obstructions near track of street railway and failure to signal.

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Obstruction near track of street railway and failure to signal.

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Obstruction of track of street railroad by carriage.

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Person using street railway tracks must use ordinary care to avoid collision.

Brown *v.* Wilmington City Ry. Co. (Del.), vol. 12, p. 440.

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Highland, etc., R. Co. *v.* Sampson (Ala.), vol. 5, p. 719.

Riding on bumper of street car.

Bard *v.* Pennsylvania, etc., R. Co. (Pa.), vol. 5, p. 717.

Running in front of moving street car.

Perry *v.* Macon Consol. St. R. Co. (Ga.), vol. 10, p. 819.

Special verdict, failing to show that plaintiff was free from contributory negligence.

Young *v.* Citizens' St. R. Co. (Ind.), vol. 5, p. 717.

Stopping an electric street car at a dangerous place.

Vasele *v.* Grant Street Electric Ry. Co. (Wash.), vol. 9, p. 75.

Stopping vehicle in such close proximity to track that a passing car collided with it.

Bedford *v.* Spokane St. Ry. Co. (Wash.), vol. 6, p. 795.

The court will not declare, as a matter of law, that a boy ten years old, who crosses a street car track in a crowd of school children, just released from school, is culpably negligent because he fails to see a street car coming towards him, at a high rate of speed, without the ringing of any bell or other warning.

Consolidated City & C. P. Ry. Co. *v.* Carlson (Kan.), vol. 7, p. 274.

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The fact that a child may not be capable of contributory negligence does not always render the defendant liable upon the mere proof of the act causing injury.

*Culbertson v. Crescent City R. Co. (La.)*, vol. 6, p. 522.

What constitutes.

*Boerth v. West Side R. Co. (Wis.)*, vol. 1, p. 264.

*Central Pass. R. Co. v. Chatterson (Ky.)*, vol. 1, p. 262.

*Cooke v. Baltimore Traction Co. (Md.)*, vol. 1, p. 263.

*Cross v. California St. Cable R. Co. (Cal.)*, vol. 1, p. 262.

*Daly v. Detroit Citizens' St. R. Co. (Mich.)*, vol. 1, p. 263.

*Downey v. Pittsburg, A. & M. Traction Co. (Pa.)*, vol. 1, p. 263.

*Hickey v. St. Paul City R. Co. (Minn.)*, vol. 1, p. 263.

*Hicks v. Citizens' R. Co. (Mo.)*, vol. 1, p. 262.

*McGrath v. City & Suburban R. Co. (Ga.)*, vol. 1, p. 263.

*Mitchell v. Tacoma R. & M. Co. (Wash.)*, vol. 1, p. 262.

*Trowbrige v. Danville St. Car Co. (Va.)*, vol. 1, p. 263.

Whether contributory negligence to go to door of car while it is in motion for the purpose of being ready to alight.

*Consolidated Traction Co. v. Thalheimer (N. J.)*, vol. 9, p. 858.

**Crossings.**

Care due from company and from drivers of vehicles at street crossings.

*Wilson v. Minneapolis St. Ry. Co. (Minn.)*, vol. 12, p. 425.

Care to be exercised by persons at street crossings.

*Macon & I. S. Elec. St. Ry. Co. v. Holmes (Ga.)*, vol. 12, p. 385.

Contract between street railways not to cross, save at

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certain points, made to prevent competition, is void.

*South Chicago City Ry. Co. v. Calumet Electric St. Ry. Co. (Ill.)*, vol. 11, p. 789.

Duty of conductor to keep lookout before car.

*Macon & I. S. Ry. Co. v. Holmes (Ga.)*, vol. 12, p. 385.

Duty to look and listen inapplicable to street railways.

*Traver v. Spokane St. Ry. Co. (Wash.)*, vol. 22, p. 759.

Evidence, custom of pedestrians crossing street.

*Metropolitan St. R. Co. v. Johnson (Ga.)*, vol. 1, p. 267.

Failure to sound gong continuously at crossing not negligence.

*Stafford v. Chippewa Val. Elec. R. Co. (Wis.)*, vol. 23, p. 364.

Failure to stop and look before driving over street car track where view is obstructed, contributory negligence.

*Darwood v. Union Traction Co. (Pa.)*, vol. 12, p. 474.

Failure to stop, look, and listen before crossing street railways constitutes negligence as a matter of law.

*Tacoma Ry. & Power Co. v. Hays (C. C. A.)*, vol. 23, p. 58.

Fright, injuries arising from fright caused by negligence of company, liability.

*Mitchell v. Rochester Ry. Co. (N. Y.)*, vol. 8, p. 215.

Mere operation of street car at crossing in such manner as to render it dangerous for person about to cross not negligence.

*Stafford v. Chippewa Val. Elec. R. Co. (Wis.)*, vol. 23, p. 364.

Mutual obligations of street railways and travelers to avoid collisions at crossings.

*Traver v. Spokane St. Ry. Co. (Wash.)*, vol. 22, p. 759.

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Railroad in street not entitled to compensation from street railway company as a condition to crossing its track. *Chicago, B. & Q. R. Co. v. Beatrice Rapid Transit, etc., Co. (Neb.)*, vol. 4, p. 325.

Respective rights of public and street railway companies at intersecting streets.

*Richmond R., etc., Co. v. Garthright (Va.)*, vol. 4, p. 263.

Respective rights of trolley car and person driving.

*Consolidated Traction Co. v. Haight (N. J.)*, vol. 8, p. 90.

Right of priority at intersection of two street railroads. *Chicago City Ry. Co. v. Taylor (Ill.)*, vol. 9, p. 513.

*Metropolitan St. Ry. Co. v. Kennedy (C. C. A.)*, vol. 9, p. 509.

Right of railroad to prevent street railway from crossing its tracks in streets at grade.

*Chester Traction Co. v. Philadelphia, W. & B. R. Co. (Pa.)*, vol. 12, p. 428.

Right of street railway to build overhead bridge, over right of way of a railroad company.

*Northern Cent. R. Co. v. Harrisburg & M. Electric R. Co. (Pa. St.)*, vol. 6, p. 151.

Right of street railway to cross railroad.

*Northern Cent. R. Co. v. Harrisburg & M. Electric R. Co. (Pa. St.)*, vol. 6, p. 151.

Right of way as between cars and vehicles at street crossings.

*Smith v. Electric Traction Co. (Pa.)*, vol. 12, p. 422.

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*New Jersey Electric Ry. Co. v. Miller (N. J.)*, vol. 6, p. 519.

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*Southern Ry. Co. v. Atlanta R. T. Co. (Ga.)*, vol. 18, p. 425.

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*Chicago & Calumet Terminal Railway Co. v. Whiting, Hammond & East Chicago Street Ry. Co. (Ind.)*, vol. 1, p. 181.

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*Chicago & Calumet Terminal Ry. Co. v. Whiting, Hammond & East Chicago Street Railway Co. (Ind.)*, vol. 1, p. 181.

*Citizens' Pass. R. Co. v. East Harrisburg Pass. R. Co. (Pa.)*, vol. 1, p. 189.

Stop, look and listen.

*Consolidated Traction Co. v. Haight (N. J.)*, vol. 8, p. 90.

*Hoelzel v. Crescent City R. Co. (La.)*, vol. 8, p. 40.

Stop, look and listen not applicable to street railway.

*Fairbanks v. Bangor, O. & O. Ry. Co. (Me.)*, vol. 23, p. 756.

*Traver v. Spokane St. Ry. Co. (Wash.)*, vol. 22, p. 759.

Sufficiency of evidence of negligence in rate of speed at crossing.

*Stafford v. Chippewa Val. Elec. R. Co. (Wis.)*, vol. 23, p. 364.

Test of negligence in rate of speed of street car at crossings.

*Stafford v. Chippewa Val. Elec. R. Co. (Wis.)*, vol. 23, p. 364.

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*Consolidated Traction Co. v. Lambertson (N. J.)*, vol. 6, p. 793.

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*Highland, etc., R. Co. v. Sampson (Ala.)*, vol. 5, p. 715.

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*Electric Ry. Co. v. Carson (Ga.)*, vol. 8, p. 770.



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Thompson *v.* Salt Lake Rapid-Transit Co. (Utah), vol. 10, p. 563.

Duty of city engineer, under contract with municipality to furnish lines and levels.

State, Crescent City R. Co. *v.* Bell, City Engineer (La.), vol. 8, p. 210.

Duty of electric car to give signals of approach.

Consolidated Traction Co. *v.* Chenowith (N. J.), vol. 5, p. 599.

Eminent domain, exercise of right by street railway company.

Baltimore & Frederickstown Turnpike R. Co. *v.* Baltimore, etc., R. Co. (Md.), vol. 3, p. 177.

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As to speed of car.

Cook *v.* Los Angeles & P. Electric Ry. Co. (Cal.), vol. 23, p. 69.

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Admissibility of evidence showing that before the cable broke directors attention had been called to its weakened state.

Musser *v.* Lancaster City St. Ry. Co. (Pa.), vol. 5, p. 718.

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McCoy *v.* Milwaukee S. R. Co. (Wis.), vol. 1, p. 267.

As to cause of fright of horse.

Atlanta Consol. St. R. Co. *v.* Beauchamp (Ga.), vol. 1, p. 266.

As to defects in appliance.

Mitchell *v.* Tacoma R. & M. Co. (Wash.), vol. 1, p. 266.

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McCoy *v.* Milwaukee S. R. Co. (Wis.), vol. 1, p. 267.

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Montgomery *v.* Lansing City Electric R. Co. (Mich.), vol. 1, p. 268.

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Laufer *v.* Bridgeport Traction Co. (Conn.), vol. 7, p. 787.

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Brittain *v.* West End St. Ry. Co. (Mass.), vol. 7, p. 773.

Freight, effect on their other powers of illegally conferring upon street car companies authority to become carriers of freight.

Brown *v.* Atlanta Ry. & Power Co. (Ga.), vol. 22, p. 886.

Frightening horses.

Flewelling *v.* Lewiston & A. H. R. Co. (Me.), vol. 6, p. 501.

Frightening horses, care to be exercised in running cars so as not to frighten horses.

McCann *v.* Consolidated Traction Co. (N. J.), vol. 7, p. 280.

Frightening horses, employees hanging their coats on projection of the side of a water sprinkler operated by electricity and thereby frightening horses.

McCann *v.* Consolidated Traction Co. (N. J.), vol. 7, p. 280.

In action against a street railway company to recover for personal injuries the question as to whether the presumption of negligence arising from such injury is successfully rebutted or not is for the jury.

O'Conner *v.* Scranton Traction Co. (Pa.), vol. 6, p. 650.

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In action to compel operation, the fact that the line is held under a lease is immaterial.

State ex rel. Grinsfelder v. Spokane St. Ry. Co. (Wash.), vol. 11, p. 62.

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Indemnity to street railway company on account of injury resulting from accident, construction of insurance policy.

Phillipsburg Horse Car Co. v. Fidelity & Casualty Co. (Pa.), vol. 2, p. 415.

**Injunctions.**

Injunction against intersecting trolley lines.

Highland Ave. & B. R. Co. v. Birmingham Ry. & Elec. Co. (Ala.), vol. 9, p. 502.

Philadelphia, W. & B. R. Co. v. Wilmington City Ry. Co. (Del.), vol. 9, p. 493.

Injunction to restrain construction.

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Power of abutting owners to restrain use of streets.

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Power of rival street railway to enjoin illegal construction.

New England R. Co. v. Central Ry. & Elec. Co. (Conn.), vol. 8, p. 261.

Power of rival street railway to enjoin ultra vires act.

New England R. Co. v. Central Ry. & Elec. Co. (Conn.), vol. 8, p. 261.

Private citizen cannot enjoin exercise of corporate powers merely because property was acquired in violation of law.

Brown v. Atlanta Ry. & Power Co. (Ga.), vol. 22, p. 886.

Right to enjoin construction as likely to cause abandonment of line in another street.

Brown v. Atlanta Ry. & Power Co. (Ga.), vol. 22, p. 886.

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Sufficiency of petition for injunction to compel removal of trolley pole.

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Injuries to passerby by electric wires.

Manning v. West End St. Ry. Co. (Mass.), vol. 6, p. 793.

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Manning v. West End St. Ry. Co. (Mass.), vol. 6, p. 793.

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Instructions, in actions for injuries.

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Investigation of cause of derailment, declarations of employee as res gestæ.

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Joint action against city and railroad company on account of defective track.

City of Fort Worth v. Allen (Tex. Civ. App.), vol. 1, p. 282.

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Fidelity Loan & Trust Co. *v.* Douglas (Iowa), vol. 9, p. 713.

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Flewelling *v.* Lewiston & A. H. R. Co. (Me.), vol. 6, p. 501.

Liability for personal injury from broken trolley wire, in moving disabled car.

Schenkel *v.* Pittsburg & B. Traction Co. (Pa.), vol. 22, p. 904.

Liability of lessor for injury caused by defective track.

Schaefer *v.* City of Fond du Lac (Wis.), vol. 11, p. 342.

Local assessments, power to assess street railways for improvements.

Cicero & P. St. Ry. Co. *v.* City of Chicago (Ill.), vol. 22, p. 815.

Location, former appeal not cause for abatement of latter appeal.

Appeal of Cherryfield & M. Elec. R. Co. (Me.), vol. 22, p. 906.

Lookouts, motorman looking in another direction.

Harkins *v.* Pittsburg, A. & M. Traction Co. (Pa.), vol. 3, p. 430.

Master and servant, repeal of act enlarging the liability of domestic corporations to their servants by constitutional provisions declaring that no foreign corporations shall enjoy any greater rights or privileges than those enjoyed by domestic corporations.

Crisswell *v.* Montana Cent. R. Co. (Mont.), vol. 3, p. 652.

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Laufer *v.* Bridgeport Traction Co. (Conn.), vol. 7, p. 787.

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State *v.* Mayor, etc., of Newark (N. J.), vol. 1, p. 176.

Municipal control of streets, tearing up street railways.

Des Moines City Ry. Co. *v.* City of Des Moines (Iowa), vol. 1, p. 215.

Municipality must determine number of tracks.

State *v.* Mayor, etc., of Newark (N. J.), vol. 1, p. 176.

Municipal officers vested with discretionary powers with respect to the location of street railways.

Appeal of Cherryfield & M. Elec. R. Co. (Me.), vol. 22, p. 906.

Ordinance impairing company's franchises.

State Consolidated Traction Co. *v.* City of Elizabeth (N. J.), vol. 3, p. 614.

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State (Cape May, etc., Prosecutor), *v.* City of Cape May (N. J.), vol. 3, p. 592.

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Power of council to demand additional sum for franchise.

Beekman *v.* Third Ave. R. Co. (N. Y.), vol. 8, p. 23.

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Sun Printing, etc., Ass'n *v.* Mayor of New York (N. Y.), vol. 8, p. 771.

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- Power of municipality to require conductors on cars.  
*State ex rel. Columbia Electric St. Ry., Light & Power Co. v. Sloan, Mayor (S. Car.)*, vol. 9, p. 44.
- Power to pass ordinance in conflict with prior one.  
*Brown v. Atlanta Ry. & Power Co. (Ga.)*, vol. 22, p. 886.
- Right of local authority to limit duration of street grant.  
*Louisville Trust Co. v. City of Cincinnati (C. C. A.)*, vol. 6, p. 114.
- Right to construct railway conferred by ordinance.  
*State (Cape May, etc., Prosecutor) v. City of Cape May (N. J.)*, vol. 3, p. 592.
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- Necessity of consent to regulations as to use of street and construction, maintenance and operation of road.  
*State v. Commissioners of Streets (N. J.)*, vol. 10, p. 323.
- Negligence, a question for jury where child was injured by street car.  
*Reilly v. Philadelphia Traction Co. (Pa.)*, vol. 5, p. 399.
- Negligence immaterial variance.  
*Cincinnati St. R. Co. v. Whitcomb (U. S.)*, vol. 1, p. 268.
- Negligence of electric railways with respect to wires.  
*Atlanta Consol. St. Ry. Co. v. Owings (Ga.)*, vol. 5, p. 1.
- Negligence, sufficiency of facts.  
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- Negligence, where one is injured by the breaking of a wire cable, question for jury.  
*Musser v. Lancaster City St. Ry. Co. (Pa.)*, vol. 5, p. 719.
- New franchise not subject to old conditions regulating manner of operating cars.  
*Stafford v. Chippewa Val. Elec. R. Co. (Wis.)*, vol. 23, p. 364.
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*Beekman v. Third Ave. R. Co. (N. Y.)*, vol. 8, p. 23.
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- Ordinance in respect to speed of street car.  
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- State v. City of Cape May (N. J.)*, vol. 6, p. 507.
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*Delaware & H. Canal Co. v. Scranton & P. Traction Co. (Pa.)*, vol. 7, p. 537.
- Ownership by city.  
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- Parallel lines, necessity of.  
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- Paramount right of street railway company to use of street.  
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*Cicero & Proviso St. R.*  
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*Schepers v. Union Depot*  
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*idated St. R. Co. (Cal.)*,  
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- Injuries to passengers, evidence.
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- Injury by appliance on street car.
  - Bowdle *v.* Detroit St. R. Co. (Mich.), vol. 2, p. 223.
- Injury to car passenger at railroad crossing where concurring negligence.
  - Washington & G. R. Co. *v.* Hickey (D. C.), vol. 9, p. 865.
- Injury to passenger alighting at unsafe place in street.
  - Conway *v.* Lewiston & Auburn Horse R. Co. (Me.), vol. 2, p. 339.
- Injury to passenger alighting from moving street car.
  - New Jersey Traction Co. *v.* Gardner (N. J.), vol. 9, p. 843.
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  - Conway *v.* Lewiston, etc., R. Co. (Me.), vol. 8, p. 769.
- Injury to passenger through failure to stop.
  - White *v.* West End St. R. Co. (Mass.), vol. 3, p. 636.
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  - Foley *v.* Brunswick Traction Co. (N. J.), vol. 23, p. 621.
- Inviting passenger to alight at night at dangerous place is negligence.
  - Sowash *v.* Consolidated Traction Co. (Pa.), vol. 12, p. 124.
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- Jumping from moving car, contributory negligence.
  - Jagger *v.* People's St. Ry. Co. (Pa.), vol. 8, p. 771.
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  - Consolidation Traction Co. *v.* Thalheimer (N. J.), vol. 9, p. 858.
- Negligence in boarding electric car is question of fact.
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- Negligence of company question for jury where passenger riding on platform is injured by sudden jerk of car.
  - Bradley *v.* Second Ave. R. Co. (N. Y.), vol. 12, p. 184.
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- Negligence resulting in injury to passenger, question for jury.
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- Passenger becomes a traveler when he steps upon the highway from the car.
  - Smith *v.* City & Suburban Ry. Co. (Ore.), vol. 5, p. 163.

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Passenger burnt in street car.

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Person alighting from street car, passing behind it, and starting across parallel track without looking to see if another car was approaching.

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Presumption of negligence where passenger was injured in collision between street car and wagon.

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Presumption where deceased stepped from one street car in ample time to have crossed parallel track and to have avoided another car coming in opposite direction.

Evansville St. R. Co. *v.* Gentry (Ind.), vol. 5, p. 500.

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Proximate cause, death following from accident, and premature birth of child.

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Reasonableness of by-law requiring passenger to show ticket.

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Riding on front platform of street car not conclusive evidence of contributory negligence.

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Running car at high rate of speed past its usual stopping place.

Denver & B. P. R. Co. *v.* Dwyer (Colo.), vol. 2, p. 185.

Running car with platform crowded with passengers at high rate of speed around a curve.

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Speed of train, injury to passenger alighting.

Hardy *v.* Milwaukee St. R. Co. (Wis.), vol. 2, p. 223.

Street railway may be required by city to increase number of cars, where its motive power has been changed, although ordinance granting its franchises fixes another number.

People *v.* Detroit Citizens' St. Ry. Co. (Mich.), vol. 11, p. 798.

Sudden jerk.

Sirk *v.* Marion St. R. Co. (Ind.), vol. 2, p. 223.

Sudden jerk of car injuring passenger riding on running board, negligence.

Hassen *v.* Nassau Elec. R. Co. (N. Y.), vol. 12, p. 1.

Tender of \$5 by passenger as fare.

Barker *v.* Central Park, N. & E. R. Co. (N. Y.), vol. 6, p. 686.

Transfer, changing method of transfer without notice to passengers.

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Where question whether ordinance requiring increased number of cars is oppressive is undecided, it must be tested before relief will be afforded.

People *v.* Detroit Citizens' St. Ry. Co. (Mich.), vol. 11, p. 798.

Whether a railroad can be compelled to construct and operate its lines on all of the streets of which it was granted that privilege.

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Presumption of reasonableness of ordinance regulating street railway.

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Right of abutting owners to enjoin the location of a street railway within the limits of a public way.

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- Right under agreement to temporarily use track at crossing.
- Port Richmond & P. P. El. R. Co. *v.* Staten Island R. T. Co. (N. Y.), vol. 1, p. 229.
- Specific performance of contract to supply electric power to street railroad.
- Electric Lighting Co. *v.* Mobile, etc., R. Co. (Ala.), vol. 4, p. 265.
- Speed of train, nonexpert testimony.
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- Speed of train, violation of city ordinance.
- Highland, etc., Ry. Co. *v.* Sampson (Ala.), vol. 5, p. 720.
- Stations, duty to provide.
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- Authority to grant use of public streets of a city primarily resides in the city.
- Beekman *v.* Third Ave. R. Co. (N. Y.), vol. 8, p. 23.
- Capacity of street railroads to accept limited street grant.
- Louisville Trust Co. *v.* City of Cincinnati (C. C. A.), vol. 6, p. 114.
- Company liable for damages caused by change of grade.
- Stritesky *v.* City of Cedar Rapids (Iowa), vol. 4, p. 535.
- Conditions subsequent with respect to time of construction of road unfulfilled, forfeiture of municipal grant.
- State ex rel. Baltimore, C. & P. B. R. Co. *v.* Latrobe (Md.), vol. 1, p. 118.
- Discretion of court to grant interlocutory injunction which would interfere with public improvement, where no part of property of applicant is actually taken.
- Brown *v.* Atlanta Ry. & Power Co. (Ga.), vol. 22, p. 886.
- Duty to pave streets.
- City of Philadelphia *v.* Hestonville, etc., R. Co. (Pa.), vol. 5, p. 659.
- Duty to repair streets between rails.
- Bangs *v.* Lewiston, etc., R. Co. (Me.), vol. 7, p. 786.
- Evidence of failure to cross track to avoid obstruction.
- Cincinnati St. R. Co. *v.* Whitcomb (C. C. A.), vol. 1, p. 267.
- Expense of change of motive power, city not estopped to deny rightful occupation of street.
- Louisville Trust Co. *v.* City of Cincinnati (C. C. A.), vol. 6, p. 114.
- Extension of road beyond city limits, how right acquired.
- Citizens' Elec., etc., Co. *v.* County Com'rs (Ohio), vol. 8, p. 769.
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- Implied condition as to use of street.
- Southern Ry. Co. *v.* Atlanta R. T. Co. (Ga.), vol. 18, p. 425.
- Laying tracks in center of street.
- Kennedy *v.* Detroit R. Co. (Mich.), vol. 3, p. 430.
- Mandamus to compel street railways to pave.
- City of Lansing *v.* Lansing, etc., Ry. Co. (Mich.), vol. 5, p. 719.
- Obligation of railroad to keep track and street adjoining in repair.
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- Recovery by city over against street railway for damages arising from defective track.
- City of Fort Worth *v.* Allen (Tex. Civ. App.), vol. 1, p. 282.
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- City of Lansing *v.* Lansing, etc., Ry. Co. (Mich.), vol. 5, p. 719.
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- White *v.* Worcester Consol. St. R. Co. (Mass.), vol. 6, p. 110.
- Right of abutting owners to sue jointly where unlawful construction of street railway.
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- Right of street railway company in public street.  
*Hall v. Ogden City St. Ry. Co. (Utah)*, vol. 4, p. 77.
- Rights of rival street railway companies in public highway.  
*West Jersey Traction Co. v. Camden Horse R. Co. (N. J.)*, vol. 1, p. 133.
- To what kinds Act March 26, 1887, § 2, of Mo., relating to the granting of street railway franchises and providing that city authorities shall by ordinance designate the route, is applicable.  
*Ruckert v. Grand Ave. Ry. Co. (Mo.)*, vol. 22, p. 641.
- Track raised above pavement.  
*Taylor v. Bay City St. Ry. Co. (Mich.)*, vol. 1, p. 166.
- Use of bridge by railway company, consent of proper authorities.  
*Berks Co. v. Reading City Pass. R. Co. (Pa. St.)*, vol. 1, p. 213.  
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- Use of turnpike by street railway.  
*Green v. City & Suburban Ry. Co. (Md.)*, vol. 1, p. 198.
- Street railway company entitled to hearing before enactment of ordinance providing for summary removal of its tracks.  
*State (Cape May, etc., Prosecutor), v. City of Cape May (N. J.)*, vol. 3, p. 592.
- Street railway company not liable for negligence of independent contractor.  
*Sanford v. Pawtucket Street Ry. Co. (R. I.)*, vol. 4, p. 318.
- Street railways, ordinance regulating right of way at street railway crossing.  
*Connor v. Electric Traction Co. (Pa. St.)*, vol. 4, p. 262.
- Sufficiency of evidence of negligence where a person was injured by fallen trolley wires.  
*Bamford v. Pittsburgh & B. Traction Co. (Pa.)*, vol. 22, p. 798.
- Taxation.  
 Construction of Ill. Rev. St. 1893, ch. 120, § 15, providing that street railway tracks shall be treated as personal property for purposes of taxation.  
*Cicero, etc., Ry. Co. v. City of Chicago (Ill.)*, vol. 22, p. 815.
- Franchise as part of roadbed, and therefore to be treated as personal property under Mich. Tax Law, § 8, subd. 16.  
*City of Detroit v. Donovan (Mich.)*, vol. 23, p. 520.
- Proper remedy to restrain collection of personal tax against street railway company by seizure of its cars under Michigan statute, preventing interference with valuable franchise.  
*City of Detroit v. Donovan (Mich.)*, vol. 23, p. 520.
- Rolling stock as personal property under Michigan tax law.  
*City of Detroit v. Donovan (Mich.)*, vol. 23, p. 520.
- Use of toll bridge by street railway does not constitute an exercise of the right of eminent domain.  
*Pittsburgh & West End Pass. Ry. Co. v. Point Bridge Co. (Pa.)*, vol. 1, p. 209.
- Use of tracks of another company.  
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- Validity of city ordinance granting franchise.  
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- Validity of ordinance amending a former ordinance permitting the use of double tracks through the streets and limiting the rights of the company to one track for a short distance in a certain very crowded and narrow street.  
*Mayor, etc., of City of Baltimore v. Baltimore Trust & Guarantee Co. (U. S.)*, vol. 7, p. 624.

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Massachusetts L. & T. Co. *v.* Hamilton (C. C. A.), vol. 11, p. 771.

Whether street railways are commercial railroads.

Fidelity Loan & Trust Co. *v.* Douglas (Iowa), vol. 9, p. 713.

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**STREETS AND HIGHWAYS.**

*See Bridges.*

*Crossings.*

*Elevated Railroads.*

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*Railroads in Streets.*

*Stations and Depots.*

*Street Railways.*

Abandonment by street railway.

Taylor *v.* Chicago, M. & St. P. R. Co. (Wis.), vol. 1, p. 170.

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    - Atchison, etc., R. Co. *v.* Peterson (Kan.), vol. 8, p. 772.
  - Liability of real estate.
    - Atchison, etc., R. Co. *v.* Peterson (Kan.), vol. 8, p. 772.
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- Power house and plant of street railway company on leased land.
  - New York Guar. & Indem. Co. *v.* Tacoma Ry. & Motor Co. (C. C. A.), vol. 23, p. 249.
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  - New York Guar. & Indem. Co. *v.* Tacoma Ry. & Motor Co. (C. C. A.), vol. 23, p. 249.
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**TAX SALE.**

Railroad tracks do not pass with land sold where such sale was not on account of taxes due from railroad.

Illinois Cent. R. Co. *v.* LeBlanc (Miss.), vol. 12, p. 877.

**TELEGRAPH COMPANIES.**

*See Eminent Domain.*

Contract of, with mortgagor company for right of way not binding on mortgagee.

Western Union Tel. Co. *v.* Ann Arbor R. Co. (C. C. A.), vol. 13, p. 395.

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Duty to guard wires from possible contact with crossing telephone wires.

Block *v.* Milwaukee Street Railway Co. (Wis.), vol. 1, p. 329.

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Lumley *v.* Wabash R. Co. (C. C. A.), vol. 6, p. 82.

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**THOUSAND-MILE TICKETS.**

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*Tickets and Fares.*

**THROUGH TRAINS.**

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**TICKET AGENTS.**

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**TICKET BROKERS.**

A ticket broker purchased of the defendant railway company tickets good over the defendant's road to a certain point, and with coupons good from there over the line of a connecting carrier. The tickets having been used by the defendant under an agreement with, and by the authority of the connecting carriers, the coupons were accepted for passage by the connecting carriers for a number of years until it came into the hands of a receiver, who, by order of the federal court, refused to accept them: *held*, that the defendant in the sale of such coupons acted merely as the agent of the connecting carrier, and was not liable for the refusal of the receiver to accept them for passage.

*Chicago & A. R. Co. v. Mulford* (Ill.), vol. 5, p. 229.

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*Connecting Carriers.*

*Free Passes.*

*Passes.*

*Railroad Commissions.*

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*Ticket Brokers.*

Acceptance of conditions contained in mileage book.

*Rahilly v. St. Paul, etc., R. Co.* (Minn.), vol. 5, p. 690.

Acceptance of printed conditions.

*Hanlon v. Illinois Cent. R. Co.* (Iowa), vol. 16, p. 101.

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A conductor has a right to eject a person from his car whose sole claim to be considered a passenger is by virtue of a ticket void on its face.

*McGhee v. Reynolds* (Ala.), vol. 10, p. 49.

Action to enjoin prosecution under California statute, granting stop-over privileges, to prevent multiplicity of suits.

*Southern Pac. Co. v. Robinson* (Cal.), vol. 21, p. 160.

Agent's refusal to sign ticket a good cause of action in tort.

*McGhee v. Reynolds* (Ala.), vol. 10, p. 49.

Alternative tickets, rights of passenger.

*Robinson v. Southern Pacific Co.* (Cal.), vol. 2, p. 44.

"Anti-scalpers' act," unconstitutional.

*People ex rel. Tyroler v. Warden of City Prison of City of New York* (N. Y.), vol. 14, p. 474.

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*Hanlon v. Illinois Cent. R. Co.* (Iowa), vol. 16, p. 101.

Authority of ticket agent to waive limitations on ticket.

*Coyle v. Southern Ry. Co.* (Ga.), vol. 20, p. 529.

Binding effect on company of statements by ticket agents.

*Atchison, L. & S. F. R. Co. v. Cameron* (C. C. A.), vol. 2, p. 108.

Burden of proving condition on ticket.

*Daniels v. Florida Cent. & P. R. Co.* (S. Car.), vol. 23, p. 107.

Cancellation of ticket, question for jury.

*Dixon v. New England R. R.* (Mass.), vol. 22, p. 10.

Carrier chargeable with notice that person is acting as ticket agent.

*Gulf, C. & S. F. Ry. Co. v. Moorman* (Tex.), vol. 11, p. 157.

Carrier estopped to deny authority of clerk assuming to be general passenger agent.

*Southern Ry. Co. v. Marshall* (Ky.), vol. 23, p. 82.

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Duty of passenger to pay fare for his minor child.

Braun *v.* Northern Pac. Ry. Co. (Minn.), vol. 17, p. 139.

Warfield *v.* Louisville & N. R. Co. (Tenn.), vol. 17, p. 135.

Commutation tickets, general custom between carrier and passenger, as evidence of employee's authority to waive conditions.

Thompson *v.* Truesdale (Minn.), vol. 2, p. 105.

Commutation tickets, obligation to surrender part of contract. Rogers *v.* Atlantic City R. Co. (N. J.), vol. 3, p. 283.

Commutation tickets, right of carrier to revoke waiver of conditions.

Thompson *v.* Truesdale (Minn.), vol. 2, p. 105.

Commutation tickets, surrender of.

Rogers *v.* Atlantic City R. Co. (N. J.), vol. 3, p. 283.

Commutation tickets, waiver of condition against detachment of coupons by passenger.

Thompson *v.* Truesdale (Minn.), vol. 2, p. 105.

Conditions applicable to another station.

Great Northern Ry. Co. *v.* Palmer (Eng.), vol. 2, p. 99.

Conditions, authority of carrier under Georgia statute.

Phillips *v.* Georgia Railroad & Banking Co. (Ga.), vol. 2, p. 110.

Conductor of subsequent train was not bound to accept ticket where failure to secure stop-over check.

Dixon *v.* New England R. R. (Mass.), vol. 22, p. 10.

**Connecting Carriers.**

Carrier selling tickets liable for injury to passenger while being carried by another carrier.

Barkman *v.* Pennsylvania R. Co. (N. J.), vol. 12, p. 250.

Liability for statements made by ticket agent of connecting line.

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*v.* Cameron (C. C. A.), vol. 2, p. 109.

Liability of company for failure to transport passenger on ticket issued by connecting line.

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Winters *v.* Cowen (Ohio), vol. 12, p. 40.

Sale of ticket to station on connecting line.

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Ticket sold by carrier under through traffic agreement does not render it liable for injury to passenger on line of another carrier.

Mathews *v.* Atchison, T. & S. F. R. Co. (Kan.), vol. 12, p. 255.

When carrier is liable as forwarder.

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Whether express contract is essential to establish a liability for damages inflicted by connecting lines.

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Consolidation, on mileage or trip tickets.

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Constitutionality of statute requiring railroad companies to sell mileage books.

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  - McGhee *v.* Reynolds (Ala.), vol. 22, p. 17.
- Duty of conductor who takes up ticket to see that passenger is provided with means of continuing his journey.
  - Sloane *v.* Southern California Railway Co. (Cal.), vol. 4, p. 182.
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  - Louisville & N. R. Co. *v.* Blair (Tenn.), vol. 17, p. 159.
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- Evidence as to conduct of acting ticket agent, in action for ejection.
  - Gulf, C. & S. F. Ry. Co. *v.* Moorman (Tex.), vol. 11, p. 157.
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    - Central of Georgia Ry. Co. *v.* Cannon (Ga.), vol. 14, p. 405.
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- Validity of printed conditions.
  - Dangerfield *v.* Atchison, T. & S. F. Ry. Co. (Kan.), vol. 17, p. 650.
- Validity of printed conditions in excursion tickets.
  - Watson *v.* Louisville & N. R. Co. (Tenn.), vol. 18, p. 115.
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  - Trezona *v.* Chicago G. W. Ry. Co. (Iowa), vol. 12, p. 104.
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  - By-law requiring that each passenger shall either deliver up his ticket or pay the fare legally demandable, reasonableness.
    - Hanks *v.* Bridgman (Eng.), vol. 3, p. 656.
  - Damages where agent refuses to sell tickets and extra fare is demanded.
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- Right to reduced rate on train where ticket office was closed on day on which such rate was customarily given.
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Forcible ejection from train where agent has made a mistake in ticket sold to passenger.

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Overcharge, voluntary payment of as effecting recovery of statutory penalty.

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Parol evidence not admissible to vary printed condition as to time limit in round trip tickets.

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of the journey was injured in going over such last part, *held*, that he is not thereby prevented from recovering. Chicago, R. I. & P. Ry. Co. *v.* Lee (C. C. A.), vol. 14, p. 264.

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*Boyd v. Spencer* (Ga.), vol. 11, p. 247.

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Regulation limiting period of ticket is reasonable where it provides for refunding the price of the ticket, or any unused part, if not used within the limited period.

*Southern Ry. Co. v. Watson* (Ga.), vol. 18, p. 209.

Right to eject passenger where the time limit of his ticket has expired.

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Liability to other company for negligence, where track is used in common.

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Prima facie evidence of ownership of track.

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**TRESPASS.**

*See Children.*

*Damages.*

*Stock.*

*Water and Watercourses.*

Error in admitting evidence as to what was offered for strip across land for railroad, where there was no evidence of authority on the part of the one making offer.

Sweeney *v.* Montana Cent. Ry. Co. (Mont.), vol. 22, p. 541.

Injunction against trespass by railroad modified after condemnation of right of way.

Southern California R. Co. *v.* Southern Pac. R. Co. (Cal.), vol. 3, p. 446.

Injury to trespasser on track.

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It was not error on the ground that jury did not understand the situation to admit evidence of value of adjoining land.

Sweeney *v.* Montana Cent. Ry. Co. (Mont.), vol. 22, p. 540.

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- Municipal ordinance no justification for prior trespass.
- Southern California R. Co. v. Southern Pac. R. Co. (Cal.), vol. 3, p. 450.
- Occupation of land by railroad track.
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- Accident from catching foot in switch.
- International & G. N. R. Co. v. Lee (Tex. Civ. App.), vol. 3, p. 434.
- Assumption of risk in going upon premises of another.
- Settoon v. Texas & Pac. R. Co. (La. Ann.), vol. 4, p. 219.
- Authority of brakeman to eject, effect of secret instructions.
- Illinois Cent. R. Co. v. West (Ky.), vol. 21, p. 239.
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- Care required in ejecting trespasser from train.
- Cook v. Southern Ry. Co. (N. Car.), vol. 21, p. 591.
- Care to be observed by company and by trespasser.
- Bias v. Chesapeake & O. Ry. Co. (W. Va.), vol. 13, p. 616.

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- Child sixteen months of age may be trespasser on track, but cannot be guilty of contributory negligence.
- Mason v. Southern Ry. Co. (S. Car.), vol. 19, p. 84.
- Duty of company to child trespassing on track near crossing.
- Brague v. Northern Cent. Ry. Co. (Pa.), vol. 15, p. 594.
- Not bound to keep lookout for trespassers.
- Alabama Great Southern R. Co. v. Moorer (Ala.), vol. 9, p. 742.
- Company liable for negligent ejection of trespasser at perilous place.
- Young v. Texas & P. Ry. Co. (La.), vol. 14, p. 831.

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- Reidel v. Philadelphia, W. & B. R. Co. (Md.), vol. 10, p. 91.
- A person walking at night on a railway track at a place customarily used by the public as a walking way is not required to be on the lookout for cars having no light or other proper signal given to warn him of their approach.
- Stanley v. Durham & N. R. Co. (N. Car.), vol. 9, p. 208.
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- Provost v. Yazoo & M. V. R. Co. (La.), vol. 18, p. 764.
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- Pharr v. Southern Ry. Co. (N. Car.), vol. 6, p. 726.
- Failure of deceased to leave track after signal given.
- Sinclair v. Chicago, B. & K. C. Ry. Co. (Mo.), vol. 3, p. 269.
- Gross negligence towards trespasser gives right of recovery notwithstanding contributory negligence.
- Bolin v. Chicago, etc., Ry. Co. (Wis.), vol. 19, p. 735.

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- Intoxication no excuse for contributory negligence of trespasser on track.  
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- Nonsuit in action for killing trespasser sitting on end of cross-tie.  
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- Riding in dangerous place on freight train without invitation.  
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- Risks assumed by trespasser on railroad bridge.  
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- Sitting down on track.  
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- Trespasser forced by pain and fear to jump from train not guilty of contributory negligence.  
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- Walking on track will not necessarily prevent recovery although plaintiff when injured was a trespasser under Mo. Rev. St. 1889, sec. 2611.  
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- Crossing signals not intended for protection of person on track elsewhere than at crossing, for his own convenience.  
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- Deceased killed on track where employees could have seen him for two thousand feet.  
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- Direction of verdict for defendant where injury to trespasser.  
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Boy of a little over seven years of age playing on railroad right of way is a trespasser as a matter of law.

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Employee riding free by permission, but in violation of rules, is not a trespasser.

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Mere failure to object to the crossing of right of way does not prevent persons crossing from being trespassers.

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**UNAUTHORIZED ACTS OF EMPLOYEES.**

*See Carriers of Passengers. Master and Servant.*

**UNAVOIDABLE.**

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**UNION DEPOTS.**

*See Carriers of Passengers. Stations.*

Mixed trains, made up in part of a passenger equipment and in part of freight cars, used for the transportation of passengers, are "passenger trains,"



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within the meaning of defendant's articles of association and of its "lease contract" with the plaintiff; and the defendant is required to furnish such trains reasonable passenger depot facilities and service.

Chicago G. W. Ry. Co. *v.* St. Paul Union Depot Co. (Minn.), vol. 7, p. 679.

Power of union depot company to regulate use of depot.

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to the defendant from the exclusion of evidence as to the rules and customs on other railroads as to such precedence.

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In action for negligence there can be no recovery where the negligence proven is of a different character from that pleaded.

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Objection on ground of must point it out.

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Bona fide purchaser entitled to order enjoining laying of additional track.

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In an action for death by wrongful act, suit may be brought in circuit court of county where deceased resided, although the accident occurred in another county.

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New York, etc., R. Co. v. Jones (Md.), vol. 23, p. 528.

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Hearsay evidence as to whether marks on embankment were made by geological survey, in action for turning water on plaintiff's land by embankment and ditches.

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*Chicago, etc., R. Co. v. Andreesen (Neb.)*, vol. 22, p. 536.

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*Smith v. Louisville & N. R. Co. (Ky.)*, vol. 19, p. 157.

Liability of street railway for injury to property caused by overflow of its vaults constructed to carry off surface water.

*Lion v. Baltimore City Pass. Ry. Co. (Md.)*, vol. 23, p. 538.

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*Walker v. New Mexico & S. P. R. Co. (N. Mex.)*, vol. 14, p. 839.

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*Harrelson v. Kansas City & A. R. Co. (Mo.)*, vol. 16, p. 848.

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*Harrelson v. Kansas City & A. R. Co. (Mo.)*, vol. 16, p. 848.

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*Sweeney v. Montana Cent. Ry. Co. (Mont.)*, vol. 22, p. 540.

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*Kansas City, etc., R. Co. v. Williams (Ind. Ter.)*, vol. 19, p. 361.

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*Brown v. Pine Creek Ry. Co. (Pa.)*, vol. 8, p. 693.

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**WAY OF NECESSITY.**

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